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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~1284~~ ~~911~~ 594 291

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, APPELLANT,

vs.

THE KENTUCKY CENTRAL RAILROAD COMPANY AND GEORGE S. BLISS AND ISAAC E. GATES, TRUSTEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED OCTOBER 31, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1294.

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1 Proceedings of the circuit court of the United States for the sixth judicial circuit and district of Kentucky, at Covington, at a regular term begun and held at the Federal court hall, in the city of Covington, on Monday, May 9th, A. D. 1887, and of our Independence the 111th year.

Court met.
Present: Hon. Howell E. Jackson, judge.

GEORGE S. BLISS and ISAAC E. GATES
vs.
THE KENTUCKY CENTRAL RAILROAD COMPANY.

Be it remembered that heretofore, to wit, on the 28th day of January, A. D. 1886, came the complainants, by their attorneys, Messrs. Ramsey, Maxwell, and Mathews, and filed in the clerk's office of this court their certain bill of complaint; which said bill of complaint is in words and figures as follows, viz:

To the honorable judges of the United States circuit court for the district of Kentucky, in chancery sitting:

Your orators, George S. Bliss and Isaac E. Gates, bring this their bill of complaint against The Kentucky Central Railroad
2 Company, and show unto your honors that the said George S. Bliss is a citizen of the State of New York and the said Isaac E. Gates is a citizen of New Jersey and that the said Kentucky Central Railroad Company is a corporation created and existing under the laws of the State of Kentucky, and, thereupon, your orators complain and say:

That the said Kentucky Central, on the first day of July, A. D. 1881, being the owner of and engaged in the lawful operation of certain lines of railway in the State of Kentucky, particularly described herein, and requiring large sums of money with which to discharge its then obligations and for other necessary and proper uses, executed and delivered unto you orators six thousand and thirty-seven bonds, whereby the said railroad company promised to unto your orators or bearer the sum of six million and thirty-seven thousand dollars, the bonds being of the denomination of one thousand dollars each, and all to become due and payable on the first day of July, in the year nineteen hundred and eleven, reserving, however, unto the said company the right to pay the said principal
3 sum at any time after the first day of July, 1886, in lawful money of the United States, and the said railroad company stipulated in the said bonds that it would pay, upon each and all of the sums evidenced thereby, interest at the rate of six per centum per annum, payable semi-annually on the first day of January and of July in each year at the city of New York on the presentation and surrender of the coupons for interest attached to said bonds, until the maturity and payment of the principal sum, and to each of said bonds were attached coupons for the installments of interest which would accrue upon said bonds during their currency.

Said bonds were delivered to your orators, to be by them indorsed in accordance with the provisions of a certain mortgage hereinafter referred to and described, and each one of said bonds was by them indorsed with a certificate that it was entitled to share in the security of said mortgage, and, thus certified, all of said bonds were delivered by said railroad company to the persons entitled thereto, who loaned to the said company the said several sums of money, and said bonds are all now outstanding in the hands of persons
4 who have purchased and now own the same. A copy of one of said bonds is embodied in the copy of said mortgage, which is herewith filed and hereinafter referred to.

Your orators further show unto the court that on May 1st, 1881, the said Kentucky Central Railroad Company, to secure the payment of the said bonds and the interest thereon, and a further issue of bonds of like tenor and effect, to the amount of five hundred and sixty-three thousand dollars, executed and delivered unto your orators its certain mortgage, whereby it conveyed unto your orators and their successor or successors, for the common and equal benefit of all persons who might be holders of the said bonds, its main line of railroad, being a line of railroad extending from the city of Covington, in the State of Kentucky, through the counties of Kenton, Pendleton, Harrison, and Bourbon, to the *the* city of Paris, in Bourbon county, Kentucky, a distance of eighty miles, and all the rights, title, and interest of said company in and to the line of railroad extending from Paris, Bourbon county, to Lexington, in Fayette county, nine-
5 teen miles in length, known and designated as the Marysville and Lexington Railroad, Southern Division, making in the aggregate ninety-nine miles, and the road-bed, track, right of way, culverts, bridges, trestles, fences, and depots, station-houses, machine shops, and other buildings, water stations and machinery therein, and the ground or lots or parcels of ground upon which the same are situated, or any ground appurtenant thereto, and all the furniture used or belonging to said company in any of its station-houses or depots, its round-houses, and the ground upon which the same are situated, and all grounds appurtenant thereto, as well those which were constructed at the date of said mortgage as those which should be afterward constructed, all the engines, locomotives, tenders, cars of every kind and description, and all other rolling stock, machinery, tools, fuel, and material, ties, iron or steel rails then owned or used by said company and thereafter to be acquired by it and used in constructing, operating, repairing, or replacing said railroad or any part thereof or any to be hereafter con-
6 structed, and also all the rights, franchises, privileges, powers, and immunities of said company in respect of and pertaining to said lines of railroad, and also any extension of said main line of railroad which might be made after the date of said mortgage toward the northern line of the State of Tennessee or to the junction of said main line with the Louisville and Nashville Railroad in the proposed extension of its Lebanon branch, at or near Lexington, or to a junction with any other railroad coming from Tennessee or Virginia into Kentucky on its southern boundary; and your orators

further say that since the date of said mortgage the said Kentucky Central Railroad Company has constructed an extension of its said main line from Paris, Bourbon county, Kentucky, through the counties of Bourbon, Clark, Madison, and Rockcastle to Livingston, in Rockcastle county, Kentucky, and the said mortgage by its express terms includes said extension and all property—real, personal, and mixed—connected therewith belonging to said company, and all franchises pertaining thereto, and invests the said trustees with
7 a first lien thereon, and for the security of the holders of said bonds and the said mortgage created in said trustees a first lien upon all of the property herein described for the security of the said holders. Said mortgage provided that all holders of said bonds, or any of them, should share equally in the benefits thereof *pro rata;* but your orators say that although it was contemplated by the parties to said mortgage that a total issue of bonds amounting to six millions and six hundred thousand dollars might be made by said company and secured thereby, there was, in fact, but an issue of six millions and thirty-seven thousand dollars, as hereinbefore set forth. Your orators further show unto the court that it was provided by said mortgage that one thousand and eleven of said bonds should be used to retire an equal amount of bonds of the Covington and Lexington Railroad Company, which said Kentucky Central Company had, for good and sufficient consideration, agreed to pay, and they were so paid.

Your orators further show unto the court that said com-
8 pany agreed, and it was stipulated in said mortgage, that it would pay all taxes imposed, assessed, or levied upon all or any part of said property, and take care of and preserve said property in good order and repair, and do all things necessary to preserve the security of your orators under said mortgage, and that it would well and truly pay the said installments of interest as they respectively matured.

Your orators further show unto the court that it was stipulated in the said mortgage that upon default of the said railroad company in the payment of any installment of interest upon any of said bonds according to the tenor and effect of the said coupons attached thereto, or in case of default in any of the things which the said company obliged itself to do, as set forth in said mortgage, and the continuance of such default for a period of twelve months, the whole of the principal of said bonds should forthwith become due and payable, and that your orators should have the right, upon the request of the holders of a majority in amount of said bonds, to
9 take possession of the said railroad and all the property embraced in said mortgage and sell the same and distribute the proceeds thereof to the parties entitled thereto.

Your orators further represent that the interest upon a large part of the said bonds is unpaid and has been unpaid for more than twelve months, and that taxes have been levied and assessed by the authorities of the State of Kentucky and by sundry municipal authorities to a large amount, but your orators cannot state the precise amount, which have remained unpaid for more than twelve

months, by reason whereof the principal of all of said bonds has become due, together with the coupons due January 1st, 1885, July 1st, 1885, and those which became due January 1st, 1886, upon a large part of said bonds, the precise amount of which your orators are unable to state, and your orators have been requested by the holders of more than one-half of the entire issue of said bonds to institute judicial proceedings for the foreclosure of said mortgage.

A copy of said mortgage is herewith filed as Exhibit "A."

10 Your orators further state that the value of the said mortgaged property is not equal to the amount of said bonds and interest, and that their security is being repaired by the continued operation of said railroad by said company.

Wherefore your orators pray that the writ of subpœna may be issued out of this honorable court to the said defendant, The Kentucky Central Railroad Company, commanding it to answer the several matters and things herein alleged, and that an account may be taken of the amount due upon the bonds herein set forth secured by the said mortgage, and that said mortgage may be foreclosed and said property sold and the proceeds applied in payment of said bonds *pro rata*, and that meanwhile a receiver may be appointed to take possession of, maintain, and operate said railroad, and for all other necessary and proper relief to which your orators may appear to be entitled.

RAMSEY, MAXWELL & MATTHEWS,
Solicitors for Complainants.

Exhibit "A," mentioned in the foregoing bill of complainant-, is in words and figures as follows, viz:

11 This indenture, made the first day of May, one thousand eight hundred and eighty-one, between the Kentucky Central Railroad Company, a corporation created and organized by and under the laws of the State of Kentucky, party of the first part, hereinafter styled the company, and George S. Bliss and Isaac E. Gates and their successors, as hereinafter provided, parties of the second part, and hereinafter styled the trustees, witnesseth:

Whereas the company has determined to borrow money to meet and discharge ex*h*isting debts and obligations duly contracted in its business and for the payment and extinguishment of certain bonds of the Covington and Lexington Railroad Company amounting to one million and eleven thousand dollars, due, respectively, in March, eighteen hundred and eighty-three, and June, eighteen hundred and eighty-five, for the payment of which mortgages were executed by the Covington and Lexington Railroad Company in eighteen hundred and fifty-three and eighteen hundred and fifty-five upon the said road to secure the payment thereof, and

12 also for the payment of five thousand shares of the preferred stock of the Kentucky Central Railroad Company, issued from the sixth day of May, eighteen hundred and seventy-five, to date, in accordance with the requirements of the compromise between the Covington and Lexington Railroad Company with Bowler and

others on the sixth day of May, eighteen hundred and seventy-five, and for other lawful puposes authorized by its character and amendments thereto, including the extension of its line of railway to Livingston, as hereinafter mentioned, and for equipping the same, and, to that end, to execute and sell its negotiable bonds and to execute a mortgage upon the rights, franchises, and privileges, and its railroads and other property hereinafter mentioned and described to secure the payment of the said bonds and the accruing interest; the said bonds to be six thousand six hundred in number, for one thousand dollars each, and number- consecutively from one to six thousand six hundred, both inclusive, and bearing date the first day of July, eighteen hundred and eighty-one, and payable in the city of New York, State of New York, in
13 lawful money of the United States, on the first day of July, nineteen hundred and eleven, with interest thereon from the date of said bonds at the rate of six per centum per annum, in like lawful money of the United States, payable semi-annually, in the city of New York aforesaid, on the first day of July and January in each and every year, in accordance with the coupons for the interest attached to said bonds, and which coupons are numbered correspondingly to the bonds to which they are respectively attached, with a consecutive numbering of the coupons in the order of maturity, and which bonds and coupons, respectively, are substantially in the form following, to wit:

UNITED STATES OF AMERICA, *State of Kentucky.*

No. —. Kentucky Central Railroad Company. $1,000.00.

Mortgage Bond.

The Kentucky Central Railroad Company acknowledges itself indebted to George S. Bliss and Isaac E. Gates or bearer in
14 the sum of one thousand dollars, which it promises to pay on the first day of July, one thousand nine hundred and eleven, or, at the option of the said company, on or at any time after the first day of July, 1886, in lawful money of the United States, with interest from the date hereof at the rate of six per centum per annum, payable semi-annually, on the first day of January and July in each year, at the city of New York, on presentation and surrender of the coupons for interest, hereto annexed, when respectively due, until the payment of the principal hereof.

This bond is one of a series of six thousand six hundred bonds of like amount, tenor, and date, numbered consecutively from one to six thousand six hundred, both inclusive, being for the aggregate sum of six million six hundred thousand dollars, issued by said company, each bond being equally secured by a mortgage or mortgages, duly executed and delivered to George S. Bliss and Isaac E. Gates as trustees and duly recorded, upon the main line of said company's railroad from Covington to Paris, and upon the line

of the same from Paris to Lexington, and also upon the
15 line from Paris or Lexington to Livingston, in Rockcastle county, Kentucky, proposed and about to be constructed, and to and upon which said last-described line of said company's railroad, when fully completed and equipped, as well as during the construction of the same, said mortgage (or mortgages) extends and constitutes a valid lien, and also upon all rolling stock, equipment, and property, real and personal, now owned or held or hereafter to be owned, held, or acquired by the said company for or in connection with the said lines of railroad, together with all the rights, franchises, and privileges of said company pertaining to the said lines of railroad so mortgaged.

This bond may, at the option of its holder, be registered in the city of New York, and after such registration, made and noted by endorsement hereon (unless thereafter registered payable to bearer), it will be payable only to such person as, on such registry noted by endorsement hereon, shall appear from time to time to be the last duly registered owner; but such registration shall not affect
16 the negotiability of the coupons.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the trustees *of* the survivor of them or their successors.

In witness whereof the said company has hereunnto affixed its corporate seal and caused these presents to be signed by its president and secretary, at Covington, in the State of Kentucky, this first day of July, one thousand eight hundered and eighty-one.

[SEAL.] ——— ———, *President.*
——— ———, *Secretary.*

Form of Coupon.

$30.00. The Kentucky Central Railroad Company will pay to bearer, at the city of New York, in lawful money of the United States, thirty dollars, being six months' interest on bond No. —, coupon No. —.

——— ———, *Secretary.*

Form of Trustees' Certificate.

We, George S. Bliss and Isaac E. Gates, do hereby certify that the within bond is one of an issue of six million six hundred
17 thousand dollars, secured by mortgage, duly executed and delivered to us as trustees.

——— ———,
——— ———,
Trustees.

Now, therefore, in order to secure the due and punctual payment of the before-mentioned six thousand six hundred bonds and the coupons for interest thereon, according to the tenor and effect of said bonds and coupons, respectively, to the persons and parties who, for

the time being, shall be the owners and holders or lawfully entitled to demand and receive payment of the same, respectively, equally in respect of all the said bonds without preference or priority of one over another by reason of priority in the time of issue or negotiation thereof or otherwise, and in consideration of the premises and of five dollars paid by said trustees to said company at and before the delivery of these presents, the receipt of which is hereby acknowledged, the Kentucky Central Railroad Company has granted, conveyed, and mortgaged, and does hereby grant, convey, and
18 mortgage, to George S. Bliss and Isaac E. Gates, as trustees as aforesaid, their successor or successors, as is hereinafter provided, for the common and equal benefit of all those who may be holders of said bonds, its main line of railroad, extending from Covington, in the State of Kentucky, to Paris, Bourbon county, in the same State, running through Kenton, Pendleton, Harrison, and Bourbon counties, eighty miles long, and all the rights, titles, and interest of said company in and to the line of railroad extending from Paris, Bourbon county, to Lexington, Fayette county, in the State aforesaid, nineteen miles long, known and designated as the Maysville and Lexington railroad, Southern Division, making in the aggregate ninety-nine miles, and the road-bed, track, rights of way, culverts, bridges, trestles, fences, and depots, station-houses, machine shops, and other buildings, water stations, and machinery therein, and the ground or lots or parcel of ground on which the same are or may be constructed or any ground or lots appurtenant thereto, and all the furniture used or belonging to said company in any
19 of its station-houses and depots, its round-houses and the ground on which the same are located or may hereafter be erected, forming part of said railroad, or on any appurtenance thereto or any hereafter to be constructed by said company, and all engines, locomotives, tenders, passenger, baggage, freight, or other cars of every kind and description, and all other rolling stock, machinery, tools, fuel, and material, ties, iron or steel rails now owned or used or hereafter to be acquired and used in the constructing, operating, and replacing of the said railroad or any part thereof or any hereafter to be constructed, and also all the rights, franchises, privileges, powers, and immunities of said company in respect of and pertaining to said lines of railroad.

And the said company grants, conveys, and mortgages to said trustees, their successor or successors, any extension of its said main line of its railroad hereafter extended or constructed toward the northern line of the State of Tennessee or to the junction of
20 said main line with the Louisville and Nashville railroad in proposed extension of its Lebanon Branch, at or near Livingston, or to a junction with any other railroad coming from Tennessee or Virginia into Kentucky on its southern boundary.

And the said company covenants and agrees with said trustees, their successor or successors, that the lien created hereby upon all the property, rights, franchises, and railroads of the company described herein shall extend and become binding upon the line of any extension of the main line of the company's railroad from its

southern end to its proposed terminus, at or near Livingston, from the moment said extension or extensions are commenced to their final completion as fully and completely as if now made:

To have and to hold all and singularly the said lines of railroad now made and hereafter to be extended as aforesaid and other property, rights, and franchises herein described and hereby conveyed to George S. Bliss and Isaac E. Gates, trustees as aforesaid, and to their successors in said trust, but expressly as aforesaid, and to their
21 successors in said trust, but expressly as trustees, for the use, benefit, and security of the several persons who shall be or may become the owners and holders of or lawfully entitled to demand and receive payment of one or more of said six thousand six hundred bonds, and the said coupons attached thereto, equally, *pro rata*, and without preference or priority of one over another, and upon and for the trusts and uses and purposes and upon and subject to the conditions and provisions hereinafter expressed and declared—that is to say:

First. So long as the company, its successors or assigns, shall not make default in the payment of either interest or principal on any of the aforesaid bonds or coupons as the same shall, respectively, become due and payable, and shall in all respects faithfully perform the conditions of said bonds and the stipulations and conditions of this mortgage, the company, its successors and assigns, shall be entitled to retain the possession of the said railroad and extensions and other property and rights hereby conveyed, and use, enjoy, and operate the same, and to receive and enjoy the income thereof, as
22 authorized by law.

Second. And it is hereby further covenanted and agreed by and between the Kentucky Central Railroad Company and the said trustees that of the six thousand six hundred bonds hereby executed, described, and delivered to said trustees and secured by the mortgage or mortgages hereinbefore set out one thousand and eleven of said bonds, amounting to one million and eleven thousand dollars, are by said trustees, their successor or successors, to be used in discharging and paying of one thousand and eleven bonds of the Covington and Lexington Railroad Company, secured by mortgages to James Winslow in trust for the payment thereof, executed on the the eighth day of April, eighteen hundred and fifty-three, and first day of June, eighteen hundred and fifty-five, payable, respectively, in thirty days from the date thereof, and all of which have been paid off and cancelled but bonds Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70,
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726, 727, 728, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741,
742, 744, 745, 746, 747, 748, 749, 750, 752, 753, 755, 758, 766, 767,
768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 779, 780, 783, 784,
785, 786, 787, 788, 789, 790, 791, 793, 795, 797, 798, 799, 800, 801,
802, 803, 804, 805, 807, 808, 810, 811, 812, 813, 814, 815, 816, 817,
818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830,
831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 844, 845,
846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859,
860, 861, 862, 863, 864, 885, 886, 887, 888, 889, 890, 891, 892, 893,
894, 897, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911,
912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 925, 928,
929, 930, 931, 932, 933, 934, 935, 937, 938, 943, 944, 946, 947, 948,
949, 950, 952, 953, 956, 957, 958, 959, 961, 962, 963, 964, 965, 966,
967, 970, 971, 972, 973, 974, 975, 976, 977, 979, 980, 981, 982,
26 983, 984, 985, 986, 987, 989, 990, 991, 992, 993, 994, 995, 996,
997, 998, 999, 1000—

The same being the outstanding bonds of the series due March 1st, A. D. 1883.

1, 2, 3, 4, 5, 6, 7, 8, 9. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 35, 37, 38, 61, 65, 77, 79, 81, 82,
83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100,

108, 109, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 153, 154, 156, 157, 158, 159, 160, 161, 163, 172, 190, 191, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 253, 262, 273, 276, 277, 278, 279, 280, 281, 282, 283, 287, 289, 290, 302, 308, 309, 317, 318, 326, 340, 356, 357, 358, 359, 360, 372, 374, 390, 391, 392, 393, 394, 399, 400, 404, 407, 409, 410, 411, 413, *413*, 415, 416, 418, 419, 424, 425, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 453, 454, 456, 458, 463, 471, 483, 491, 495, 500—

The same being the outstanding bonds of the series due July 1st, A. D. 1885.

27 And the remainder of said bonds are by said trustees to be turned over to said company for the lawful purpose of said company, including the extension and equipment of the said road, to Livingston, as above provided, as the same shall be required.

Third. And the company agrees that it will pay all the taxes imposed, assessed, or levied upon all or any part of the property or franchises hereby conveyed or intended so to be, and it will take care of and preserve the same in good order and repair, and at its own cost will do all acts necessary to be done to keep valid the lien hereby created upon all the said premises, property, and franchises by these presents conveyed or intended so to be.

And that it will at any time and from time to time execute, acknowledge, and deliver, under its corporate seal in due form, to said trustees, their successor or successors, all such other assurances, deeds, mortgages, or other instruments of writing as may be reasonably requested for the better carrying into effect the true intent and meaning of these presents.

28 In case of a local change in the line or erection in part of said railroad and a sale thereof made or a sale of any of the rolling stock or equipment of said railroads the trustees shall join in releasing the said rights, lands, or erections and premises that may be abandoned and not longer needed for the due maintenance and operation of said railroad and branches, and such rolling stock or equipment surrendered and no longer needed may be sold by the company, and the lien hereby created and existing upon the absolute rights or property so sold shall extend and attach to the proceeds arising from the sale thereof.

All new additional lands or erections, rolling stock or equipment, acquired by the company for the purpose of said railroad hereby conveyed shall become subject to the lien and charge by these presents created.

Fourth. In case default shall be made in the payment of the interest on any of the said bonds, according to the tenor of the coupons thereto annexed, or in the payment of the principal of any of

29 the said bonds when the same shall become due and payable, or in case of any default in anything herein required to be kept or done by the company and the continuance of such default

for the period of twelve months, the principal of said bonds shall forthwith become at once due and payable, notwithstanding anything contained herein, and the trustees may, or upon a requisition in writing, signed and verified by the holders of a majority in amount of the bonds secured hereby then outstanding, or by their representatives, duly authorized in writing, and upon a tender of a proper indemnity for costs, counsel fees, and charges, personally, or by attorneys or agents, shall forthwith enter into and upon and take and the company shall surrender possession of the said railroad and property hereby conveyed, and the trustees shall use, operate, and enjoy the same, and receive and get in the rents, issues, and profits thereof, and all arrears of the same, and also with or without such entry shall proceed, and they are hereby authorized and empowered,

to sell and dispose of all and singular the said railroad in the
30 speediest mode authorized by the laws of Kentucky, with
their equipments, franchises, rights, immunities, privileges, appurtenances, and property hereby conveyed or intended so to be, said sale to be at public auction, in the city of Covington, State of Kentucky, at some convenient place in said city; public notice of the time and place of such sale having been advertised in two or three papers published daily in Cincinnati, Ohio, and in Lexington, Kentucky, and one published in the city of New York, said advertisement to be semi-weekly for five successive weeks prior to such sale, or to adjourn said sale from time to time at their discretion.

Such sale shall be made to the highest bidder, and the said trustees shall convey and grant to such bidder the said railroad and branches and their equipments, franchises, appurtenances, and property free from all trusts hereby created, which sale and conveyance, so made under the laws of Kentucky, shall be an absolute and final bar to the company, its successors and assigns, and to all right and

equity of redemption in and to the said railroads and branches
31 and their equipments, rights, privileges, franchises, immunities, from taxation and otherwise, and property hereby conveyed or intended so to be or any portion thereof, and to all persons claiming or to claim the same under the company.

But, nevertheless, a majority in interest of said bondholders may, in case of such default, by an instrument in writing signed by them, instruct the said trustees to declare the said principal sum due or waive their right so to do, upon such terms and conditions as such majority shall deem proper, or may annul or reverse the election made by the trustees, anything herein contained to the contrary notwithstanding; but the action of the trustees or bondholders in case of any default shall not affect any subsequent default on the party of the first part or impair any right resulting therefrom.

And it is further covenanted and agreed that it shall be lawful for the bondholders so demanding such sale, or a majority of them, and all holders of bonds secured hereby who may unite with them to

purchase said premises at any such sale, and in the event of
32 such purchase by such bondholders, they shall be allowed
credit as so much cash paid for so much of said purchase-money as shall be a proper share or dividend to which the bonds

held by such purchasers shall be entitled; and after deducting from the rents, issues, and profits of said railroad and branches and proceeds of such sale thereof just allowance for all its expenses, including attorneys' and counsel fees and all other expenses, advances, or liabilities which may have been made or incurred by the trustees in operating and maintaining the said railroad and branches, or in managing the business while in possession thereof, and in arranging for making and completing the sale thereof, and all payments which may have been made by them for taxes, assessments, charges, mortgages, and other liens prior to the lien of this mortgage on the said premises or any part thereof, as well as just and reasonable compensation for their own services, the trustees shall apply the purchase-money as follows:

First. To the payment of the amount that shall appear to
33 be due upon said bonds, including interest, the amount of interest due and unpaid being added to the principal amount of said bonds, neither the principal or interest having priority or preference one over the other, rateably to the legal holders of said bonds.

Second. And if after the payment of the principal and interest of all the bonds secured hereby and surplus shall remain, then the trustees shall reconvey or pay over, account for, and deliver any such surplus or remainder to the company, its successors or assigns, or dispose of the same as any court of competent jurisdiction may direct.

Fifth. And it is hereby further covenanted and agreed that in case of any default in the payment of said bonds secured hereby, or any interest thereon herein provided for, or in the observance of any of the covenants, conditions, provisions, or agreements herein contained, the company will waive and hereby does waive all benefits of any stay, appraisement, and redemption laws, or of any laws regulating sales under mortgage foreclosures in the State of Kentucky now existing or which may hereafter be enacted and exist.

34 Sixth. It is further covenanted and agreed that any time prior to a sale hereunder, upon the payment in full as herein provided of the said bonds issued hereunder and secured by this mortgage and all the interest thereon and the expenses and compensation of the trustees, this deed shall become void, and the estate and title hereby granted shall revert to and vest in the company, its successors and assigns, without other conveyance thereof.

Seventh. The trustees shall have power to call a meeting of the bondholders in the city of Cincinnati or New York, on giving thirty days' notice of the time and place of such meeting, whenever, in their judgment, the interest of the bondholders require it, and, in the event of the death or resignation, removal, or inability or incompetency of the trustees, to advertise such meeting upon thirty days' notice in one or more newspapers in the cities of Cincinnati and New York semi-weekly.

Said meeting of the bondholders may be called by the holders of the six hundred bonds hereby secured and then outstanding,

35 and, in addition, printed notices must be sent by mail, postage prepaid, to the holders of all registered bonds at their last registered address. At all such meetings at least a majority of said bonds at the time must be present or represented in person or by proxy, and at any such meeting all bondholders may vote in person or by proxy, provided that non-registered bonds or their proxies must produce their bonds with an affidavit of the ownership.

Eighth. It is further covenanted and agreed that the trustees and their successors hereby accept the aforesaid trusts and agree to execute them upon the following terms and conditions, to wit:

The trustees, their successor or successors, may resign and discharge themselves of the trust created by this conveyance by notice in writing to the company three months before such resignation shall take effect, or such shorter time as may be accepted as adequate notice and upon the due execution of the conveyances hereinafter required; that the trustees shall be answerable for gross negligence and wilful default only.

36 That the trustees may employ and advise with counsel learned and experienced in the law, and that the proper and necessary expense thereof and all other reasonable and proper charges and expenses of the trustees, including all personal expenditures in the execution of the trust and a proper compensation, shall be paid said trustees or their successors by the company, as they are incurred or otherwise, out of the trust estate on which they are hereby charged.

That, if essential to a faithful discharge of the trust, they may employ agents or attorneys-in-fact to act for them, and that all the covenants and agreements herein contained or implied may be specially enforced by any court of competent jurisdiction.

But the company agrees that it will indemnify and hold harmless the trustees, their successor or successors, against all loss or damage to which they may be subjected by the execution of this trust or by the operation or management of the property hereby conveyed, not caused by the personal misconduct, neglect, or of laches of the trustees, their successor or successors.

37 Ninth. It is further understood and agreed that the trustees may be removed *that the trustees may be removed* by vote of a majority in interest of the holders of outstanding bonds secured hereby and remaining unpaid.

At the time of such vote, the said vote being had at a meeting of the bondholders duly held, and attested by an instrument duly executed by all the persons so voting for such removal and having a right to vote, being certified and proved by the sworn statement of the chairman and secretary of said meeting.

It is further agreed that in the event of the disability, removal, or failure from any cause of the trustees, their successor or successors, to act as trustees the president of the company may, by the consent in writing of one-third in value of the bonds then outstanding and unpaid, by a duly acknowledged w-itten instrument, which shall be recorded in the county clerk's office of Kenton county, at Covington, Kentucky, appoint some competent successor or successors to said

trust, and the successor or successors so appointed shall act
38 until a meeting of the bondholders is held, when said trustees so appointed shall be ratified or rejected by a vote of the majority of the holders of bonds secured hereby and then outstanding and unpaid.

If such appointment is not ratified the bondholders shall, by a majority, as hereinbefore last cited, proceed to appoint *as* trustee in lieu of the appointee of the president, in which event their powers as trustees cease and are determined.

And in case of such appointment by the bondholders, either by ratifying the president's appointment or the substitution of other trustees, the company covenants to make all such deeds and other instruments as shall enable the parties so appointed to execute the trusts hereby created as fully and completely as if such appointed parties had been originally appointed the trustees.

In witness whereof the party of the first part has hereunto caused its corporate seal to be hereto affixed and the same to be subscribed by its president and attested by its secretary and the said parties of the second part have hereunto subscribed their names and affixed their seals the day and year first-above written.

39 KENTUCKY CENTRAL RAILROAD COMPANY,
By M. E. INGALLS, *President.*
Attest: C. H. BRONSON, *Secretary.*

And on a day following, to wit, on the 17th day of March, A. D. 1886, the following order was entered herein, viz:

GEORGE S. BLISS and ISAAC E. GATES
ag'st
THE KENTUCKY CENTRAL R. R. CO.

This day came the Louisville and Nashville Railroad Company, by its attorneys, Messrs. Barnett, Noble and Barnett, and moved the court that they be allowed to file herein their intervening bill of complaint and certain exhibits thereto. Thereupon, the court being advised, it is ordered that said intervening bill of complaint and the following exhibits, viz., copy of contract, Exhibit "A," Exhibits B, D, E, F, G, H, I, J, K, L, M, N, O, P, and Q be, and the same are now, filed.

40 The intervening bill of complaint mentioned in the foregoing order was in words and figures as follows, to wit:

To the honorable the judges of the circuit court of the United States for the district of Kentucky, in chancery sitting:

Your orator, the Louisville and Nashville Railroad Company, brings this its intervening bill of complaint against the Kentucky Central Railroad Company and George S. Bliss and Isaac E. Gates, and shows unto your honors that the said Louisville and Nashville Railroad Company is a corporation duly incorporated, organized, and existing by and under a law of the State of Kentucky, with

power and authority to contract and be contracted with and to sue and be sued as a natural person; that said Kentucky Central Railroad Company is and was at the several times hereinafter mentioned also a corporation duly incorporated, organized, and existing by and under a law of same State, with power and authority to contract and be contracted with and to sue and be sued as a natural person;
41 that said George S. Bliss is and at the several times hereinafter mentioned was a citizen of the State of New York, and that said Isaac E. Gates is and at the several times hereinafter mentioned was a citizen of the State of New Jersey; and thereupon your orator complains and says—

That said Kentucky Central Railroad Company, in order to secure certain desired traffic, rights, and facilities to and over the road when constructed, did, on or about the — day of ——, 1880, induce your orator to enter into an informal written contract with it, whereby your orator, for the consideration to be paid to it by said Kentucky Central Railroad Company, hereinafter set out, agreed to procure the right of way and construct an extension of its line of railroad from Livingston station, in Rockcastle county, Kentucky, to Jellico station, on the line between the state of Kentucky and the State of Tennessee; and your orator did, under and in pursuance of the terms of said contract, construct said line of railroad, and after the same had been constructed as aforesaid said in-
42 formal contract was merged into a more formal one, executed by your orator and said Kentucky Central Railroad Co. on the 9th day of May, 1884, a copy of which latter contract is filed with and asked to be made part of this bill, marked "Exhibit A." The original being filed in a common lawsuit pending in the Jefferson court of common pleas, it cannot be filed herewith.

In and by said contract your orator agreed to give said Kentucky Central Railroad Company equal traffic rights with itself in every respect over that portion of its branch road aforesaid between Livingston station and said Jellico station for all traffic between all points on and beyond said Kentucky Central Railroad Company's lines and all points in Tennessee and beyond with the privileges of running its own trains under its own trainmen, at its own costs and expense, and in accordance with schedules satisfactory to it, but all trains and trainmen to be run subject to and governed by the rules and regulations governing the movements of your orator's trains, the trains of said Kentucky Central Railroad Company at all
43 times to have equal right with the trains of the same class of your orators.

It was further agreed in and by said contract that, until such time as the said Kentucky Central Railroad Company should desire to run its own trains over said road, your orator would handle the traffic between Livingston and Jellico for said Kentucky Central Railroad Company, charging for said services rates as follows, viz:

On freight, 30 cents per ton.

On passengers in your orator's cars, 45 cents each.

On passengers in cars of Kentucky Central Railroad Company, 60 cents each.

There to be no charge for empty cars.

It was in and by said contract further agreed that the local rates on said Knoxville Branch, the road aforesaid between Livingston and Jellico aforesaid, should not be higher per mile for the same distance than the local rates over other parts of said road between Lebanon Junction and Jellico aforesaid; and that for the purposes of said contract it was therein agreed that the cost to your orator for acquisition of the right of way and construction of said line of road between Livingston and Jellico stations aforesaid, less cost of station-houses and platforms north of Jellico, was $2,000,000, and

44 *and* said Kentucky Central Railroad Company agreed to pay to your orator, in full settlement for the rights in said contract granted, six per cent. per annum on $1,000,000, being one-half the cost aforesaid, said six per cent. or $60,000 per annum to be paid in equal installments on the first day of June and the first day of December of each year, excepting that the payment to be made December 1st, 1884, should be such proportion of the $60,000 as the period between the taking effect of said contract and December 1st, 1884, should be to the period of six months.

And it was further agreed in and by said contract that said Kentucky Central Railroad Company should monthly pay, as soon after the close of each month as the accounts could be rendered, not later than the 25th of the next ensuing month, one-half of the cost of maintenance, repairs, and renewals of said road between Livingston and Jellico aforesaid, not including the repairs and renewals of station buildings, platforms, or other buildings not required by said Kentucky Central Railroad Company in the exercise of the franchises by said contract conveyed.

45 It was in and by said contract further agreed that should disagreement arise between the parties thereto as to any act or omission to act thereunder or as to the meaning of any provision thereof the same should be submitted to arbitraters, whose award should be final and by each party complied with and performed.

And it was further provided in and by said contract that it should take effect on the first day of September, 1884, and as much earlier as said Kentucky Central Railroad Company might elect and remain in force and effect for twenty-five years from and after that date.

Your orator, further complaining, says it has, during all the time since the execution and taking effect of said contract as aforesaid and in compliance therewith, conceded and given to said Kentucky Central Railroad Company equal traffic rights with itself in every respect over aforesaid line of railroad between Livingston and Jellico — over said line of railroad between all points on and beyond, with the privilege to said Kentucky Central Railroad Company of running its own trains over said road under its own train-

46 men, at its own cost and expense, and in accordance with schedules satisfactory to itself, to be run subject to and governed by the rules and regulations governing the movements of trains of your orators.

It has also ever been ready to concede and give to said Kentucky Central Railroad Company's trains equal rights with its own trains

of the same class on and over said road, but your orator says that said Kentucky Central Railroad Company has never run or offered to run any trains over said line of railroad between Livingston and Jellico aforesaid.

And your orator further says that said Kentucky Central Railroad Company, from the time said contract took effect, on the first day of September, 1884, until the first day of April, 1885, claimed all its traffic rights equal to those of your orators, and exercised all except that of running its own trains on and over said road by transporting freight and passengers over same, but after said first day of April, 1885, said Kentucky Central Railroad Company did not claim all its traffic rights, but wrongfully and against the consent and will of your orator repudiated said contract and
47 denied that it was any longer bound by its provisions, but your orator, in compliance with the terms of said contract, has at all times since the same went into effect as aforesaid handled all such traffic between Livingston and Jellico aforesaid as was furnished to it to be handled by or for said Kentucky Central Railroad Company and at the charges therefor fixed and agreed on in said contract, and its local rates since said contract went into effect between Livingston and Jellico aforesaid have never been higher per mile for the same distance than the local rates over other parts of said road between Lebanon Junction and Jellico station aforesaid, and it has ever been ready to have any disagreement that might arise between the parties to said contract as to any act or omission to act thereunder or as to the meaning of any of its provisions settled by arbitration, as provided, therein, and to abide by and perform the award of the arbitraters.

Your orator, further complaining, says that under and by the terms of said contract said Kentucky Central Railroad Company owned and agreed and was bound to pay to your orator, on
48 the 1st day of June, A. D. 1885, thirty thousand dollars and on the 1st day of December, A. D. 1885, the further sum of thirty thousand dollars, these two sums being the interest, at six per cent. per annum, from December 1st, A. D. 1884, to December 1st, A. D. 1885, on one million dollars, the one-half of the cost of the right of way and construction of aforesaid line of railroad.

That payment of the former of said sums was on said first day of June, A. D. 1885, and of the latter of said sums on the 1st day of December, A. D. 1885, by your orator demanded of said Kentucky Central Railroad Company and payment of each sum refused, and the whole of each of said sum is now due and wholly unpaid.

Your orator, further complaining, says that under and in compliance with the terms of said contract it expended for cost of maintenance, repairs, and renewals of said line of railroad between Livingston station and Jellico station aforesaid, not including the repairs and renewals of station buildings, platforms, or other buildings not required by said Kentucky Central Railroad Company in
49 the exercise of the franchises conveyed to it by said contract, the following sums during the following months, respectively, to wit:

During the month of September, A. D. 1884, the sum of $2,814,58; during the month of October, A. D. 1884, the sum of $3,229.85; during the month of November, A. D. 1884, the sum of $2,882.34; during the month of December, A. D. 1884, the sum of $2,042.98; during the month of January, A. D. 1885, the sum of $2,689.32; during the month of February, A. D. 1885, the sum of $1,916.00; during the month of March, A. D. 1885, the sum of $1,757.52; during the month of April, A. D. 1885, the sum of $1,882.72; during the month of May, A. D. 1885, the sum of $2,141.90; during the month of June, A. D. 1885, the sum of $2,694.78; during the month of July, A. D. 1885, the sum of $3,269.68; during the month of August, A. D. 1885, the sum of $3,281.70; during the month of September, A. D. 1885, the sum of $2,635.28; during the month of October, A. D. 1885, the sum of $2,895.94, and during the month of November, A. D. 1885, the sum of $1,729.90, one-half
50 of each of which respective sums said Kentucky Central Railroad Company, in and by said contract, agreed and bound itself to pay to your orator when the account therefor should be rendered to it, not later than the 25th day of the succeeding month.

Your orator further states that an account and statement of the items of the expenses incurred as aforesaid during each of said months, amounting to the respective sum aforesaid, was by your orator after the 1st and prior to the 25th day of the month succeeding rendered and presented to said Kentucky Central Railroad Company and a payment of one-half thereof demanded of it, which payment was refused, and the half of each of the aforesaid sums so incurred as aforesaid by your orator is due and wholly unpaid. The several sums so due as aforesaid by said Kentucky Central Railroad Company to your orator for aforesaid respective months are as follows, to wit: For the month of September, A. D. 1884, $1,407.29; for the month of October, A. D. 1884, $1,614.92½; for the month of November, A. D. 1884, $1,441.17; for the month of December, A. D. 1884, $1,021.49; for the month of January, A. D. 1885, $1,344.66; for the month of February, A. D. 1885, $958.00;
51 for the month of March, A. D. 1885, $878.76; for the month of April, A. D. 1885, $941.36; for the month of May, A. D. 1885, $1,070.95; for the month of June, A. D. 1885, $1,346.69; for the month of July, A. D. 1885, $1,634.84; for the month of August, A. D. 1885, $1,640.85; for the month of September, A. D. 1885, $1,317.64; for the month of October, A. D. 1885, $1,447.97, and for the month of November, A. D. 1885, $864.95, amounting in all to $18,932.25.

An itemized account of the expenses so incurred as aforesaid by your orator in the maintenance, &c., of said line of railroad between Livingston and Jellico aforesaid, and so rendered and delivered to said Kentucky Central Railroad Co. as aforesaid, for each month, is filed herewith and marked, respectively, "Exhibit-" B, D, E, F, G, H, I, J, K, L, M, N, O, P, Q.

Your orator says said Kentucky Central Railroad Company has paid to your orator the semi-annual interest on one million dollars

due, under said contract, on the 1st day of December, A. D. 1884, and your orator, under said contract, is entitled to recover against the said Kentucky Central Railroad Company the two aforesaid sums of thirty thousand dollars each, with interest on one of them from the 1st day of June, A. D. 1885, and on the other from
52 the 1st day of December, A. D. 1885, at the rate of six per cent. per annum; also to recover the further sum of aforesaid $18,932.25, with interest at the rate aforesaid on one-half of each of said total monthly accounts from the 25th day of the month succeeding the one during which such expenses were incurred until paid.

Your orator, further complaining, says that said Kentucky Central Railroad Company, in order to extend its line of railroad from Lexington, Fayette county, Kentucky, to which point it had been constructed, to the southern boundary line of the State of Kentucky, or to any intermediate point, procured to be passed by the Legislature of the Commonwealth of Kentucky an act entitled An act to amend an act entitled An act to incorporate the Kentucky Central Railroad Company, approved March 20th, A. D. 1871, by the second section of which act the board of directors of said company were authorized, for the purpose of making such extensions and of building branches thereof, to increase its capital stock and borrow money, and issue bonds therefor, payable at such times and place, bearing such interest, and sell the same at such price as they might
53 determine, and for the payment thereof might mortgage the said road, its entire property, equipments, and franchises; and by the eighth section of said act it was provided that, to the extent of all claims of persons for injuries to stock or person, or for material furnished said company, or breach of contract the claimant should have a lien upon the rolling stock of said company, any mortgage to the contrary notwithstanding; which act is in full force and effect.

And your orator says that under and by virtue of the power conferred by said act, and for the purpose aforesaid, said Kentucky Central Railroad Company constructed an extension of its line of railroad from Lexington aforesaid to Livingston aforesaid, and procured to be constructed by your orator, for the common use of it and said Kentucky Central Railroad Company, aforesaid line of railroad from Livingston aforesaid to Jellico aforesaid, in order to have and thus affording a through and connected line from said Kentucky Central Railroad Company from Covington, Kenton county, Kentucky, to the southern line of the State of Kentucky.

54 Your orator further says the contract sued on herein was made, the debt sued for herein contracted, and aforesaid line of railroad between Livingston aforesaid and Jellico aforesaid constructed by your orator under and protected by aforesaid eighth section of the aforesaid act of the Legislature of the Commonwealth of Kentucky.

And your orators, relying on the same, says it has and hereby asserts its lien, which it says is prior and superior to all others by reason of aforesaid contract and the breach thereof, and the materials

furnished for the maintenance and repairs of aforesaid line of railroad, to secure the payment of its debts aforesaid, upon the rolling stock of said Kentucky Central Railroad Company, which is used on or in connection with said railroad, extending from Covington to Livingston aforesaid and consisting of various kinds of locomotives, engines, tenders, and cars, the number, kinds, and description of which are unknown to your orator.

Your orator, further complaining, says the said George S. Bliss and Isaac E. Gates, on the 28th day of January, A. D. 1886,
55 brought their suit in equity in this honorable court against said Kentucky Central Railroad Company, seeking therein to procure a foreclosure of a mortgage or deed of trust, dated May 1st, A. D. 1881, alleged to have been executed and delivered by said Kentucky Central Railroad Company to said George S. Fox and Isaac E. Gates, purporting to convey to them, as trustees, the line of railroad of said grantor, extending from Covington aforesaid to Livingston aforesaid, only a part of which was then completed, with its franchises, rails, right of way, buildings, and so forth, as is fully set out and described in said mortgage and suit; also the rolling stock of said company, all to secure the payment at maturity of six thousand and thirty-seven bonds of the denomination of one thousand dollars each, alleged to have been executed and issued by said Kentucky Central Railroad Company on the 1st day of July, A. D. 1881, payable thirty years hereafter, and to have sold said railroad and said railroad property aforesaid to satisfy said alleged bonded debt, and in the meantime for the appointment of a receiver
56 to take possession and operate said road.

And, on motion of said George S. Bliss and said Isaac E. Gates, the said railroad company not objecting but colluding with them to accomplish such purposes, on the 29th day of January, A. D. 1886, this honorable court appointed such receiver, who accepted said office and trust, executed bond as required by law, and took and now has possession of and is operating said road under the order of this honorable court.

Your orator says said rolling stock of said Kentucky Central Railroad Company which is embraced in aforesaid mortgage to said George S. Bliss and Isaac E. Gates, as trustees aforesaid, is the same rolling stock upon which your orator has and herein asserts its prior and superior lien aforesaid, and said bonds, if valid, were issued by said Kentucky Central Railroad Company and purchased and held by the owners thereof, and by said Bliss and said Gates, their trustees, and said mortgage, if valid, was executed, delivered, and accepted under and subject to all the provisions of aforesaid act of the
57 Legislature of the Commonwealth of Kentucky, and the lien secured thereby, if one is secured, is inferior and subject to the lien of your orator acquired as aforesaid under and by virtue of said eighth section of the act aforesaid.

Your orator says it is without remedy in any other court to assert and have determined its lien aforesaid upon aforesaid rolling stock by reason of this honorable court having first acquired and now possessing exclusive jurisdiction to determine all liens upon said

railroad property, and it *is* therefore asks that it may be permitted to file in said suit this its intervening bill of complaint.

Wherefore your orator prays that the writ of subpœna may be issued out of this honorable court to said Kentucky Central Railroad Company and to said George S. Bliss and said Isaac E. Gates, commanding them, respectively, to answer the several matters and things herein alleged; that the amount due your orator aforesaid, principal and interest, may be ascertained and adjudged, and that it may be determined that your orator has a prior and superior lien on said rolling stock as security for its debts aforesaid; that the receiver herein be required to ascertain and report the number, kinds, and description of the various engines, locomotives, cars, tenders, and so forth, composing said rolling stock; that the net earnings of said railroad while in the hands of a receiver may be ordered to be applied as a credit or payment, as the case may be, of your orator's debt aforesaid, and that said rolling stock be sold by order of this court, and the proceeds of such sale, or so much thereof as may be necessary, be first applied in satisfaction of the whole or the residue, as the case may be, of your orator's aforesaid debts, principal and interest; and it prays for its costs and for all such other and proper relief as your orator may be entitled to receive.

58

BARNETT, NOBLE & BARNETT,
Counsel for Louisville and Nashville Railroad Company.

"Exhibit A," mentioned in the foregoing intervening bill of complaint, is in words and figures as follows, viz:

59

"EXHIBIT A."

In consideration of the informal contract created by the two letters written by E. P. Alexander, second vice-president of the Louisville & Nashville Railroad Company, to William Earnst, president of the Kentucky Central Railroad Company, dated November 4th, 1880, and November 30th, 1880, and the action of said Kentucky Central Railroad Company in extending its line of road to connect with the Knoxville Branch of the Louisville and Nashville railroad at a point north of Livingston, Ky., the said railroad companies, the Louisville and Nashville Railroad Company being the first party and the Kentucky Central Railroad Company being the second party, have made the following agreement, to wit:

First. The first party agrees to give the second party equal traffic rights with itself in every respect over that portion of the Knoxville Branch between Livingston station, in Rockcastle county, Kentucky, and Jellico station, at the State line between Kentucky and Tennesee, for all traffic between all points on or beyond said second party's lines and all points in Tennessee and beyond, with the privilege of running its own trains under its own trainmen, at its own costs and expense and in accordance with schedules satisfactory to it; but all trains and trainmen are to be run subject to and be governed by the rules and regulations gov-

60

erning the movement of trains of the party of the first part, it being understood that the trains of the second party shall at all times have equal rights — the trains of the class of the first party, provided that when necessary the time of trains of less importance of either party may be altered as far as necessary to accommodate trains of greater importance of the other party; and where trains of equal importance of the other party —; and where trains of equal importance conflict there shall be a division of difference, each party having equal rights with the other; and should any difference arise between the parties it shall be settled by arbitration, as hereinafter provided.

Second. So far as may be practicable all traffic to and
61 from any station on the Knoxville Branch shall be reserved to the first party; but in the event the second party transports on its own trains any of such traffic, passenger or freight, full local rates shall be charged as per tariffs of *of* the first party governing in such cases, and as compensation for such service said second party shall be entitled to twenty (20) per cent. of the amount collected on passengers and three-tenths of a cent per ton per mile on freight; but in fixing the compensation of the party of the second part no distance is to be rated less than thirty (30) miles.

The compensation for carriage of mails on the line of road between Livingston and Jellico shall be divided between the respective parties hereto in proportion to the average weight of through mails carried on such lines of road by the trains of each party hereto, such average weight to be determined by the govermental weighing upon which said compensation is based; but the party of the second part shall be entitled to the compensation for the carriage of all mails coming from or delivered to said party of the second part which shall be carried through in either direction over the road between Livingston and Jellico on trains of the party of the
62 first part, less, however, a reasonable allowance for the expenses of carrying the same; but the party of the second part shall not be entitled to any part of the compensation received for carrying mails between stations located on the line between Livingston and Jellico *and Livingston and Jellico* or other points on Louisville and Nashville Railroad, except that reasonable allowance shall be made to the party of the second part for the expense of carrying such mails, if it shall be required to carry them.

Third. Until such time as the party of the second part desires to run its own trains over the road the party of the first part will handle the traffic between Livingston and Jellico for said party of the second part, charging for said service rates as follows:

On freight, 30 cents per ton.

On passengers in L. & N. cars, 45 cents each.

On passengers in cars of the party of the second part, 65 cents each.

No charge for empty cars.

Fourth. Should any damage to persons or property result from any negligence of the second party, its officers or servants, it agrees to hold the first party harmless against all such damages, and should the first party be sued and judgment rendered against

63 it for such damages, the second party binds itself to pay the same, with all costs incident thereto, or to refund the same and costs should the first party have already paid such damages and costs.

Should any damage to persons or property result from any negligence of the first party, its officers or servants, it agrees to hold the second party harmless against all such damages; and should the second party be sued and judgment rendered against it for such damages the first party binds itself to pay the same, with all costs incident thereto, or to refund the same and costs should the second party have already paid such damages and costs; and should any such damage result from the joint negligence of the parties hereto or their servants the damage shall be equally born- between themselves by the parties hereto; and in case of dispute as to who may have been in fault the matter is to be arbitrated as hereinafter provided.

Fifth. The first party hereby agrees that its local rates on — Knoxville Branch, between Livington and Jellico, shall not be higher per mile for the same distance than the local rates over other
64 parts of said Knoxville Branch between Lebanon Junction and Jellico.

Sixth. For the purpose of this agreement it is agreed that the cost of the first party for acquisition of the right of way and construction of the Knoxville Branch extension from Livingston, Kentucky, to Jellico, Kentucky, less cost of station-houses and platforms north of Jellico, was $2,000,000, and the second party agrees to pay to the first party in full settlement for the rights herein granted 6% per annum on $1,000,000, being one-half the agreed cost as aforesaid, said 6 per cent. on $1,000,000, or $60,000 per annum, to be paid in equal installments on the 1st day of June and the 1st day of December of each year, excepting that the payment to be made December 1, 1884, shall be such proportion of the $30,000 as the period between the taking effect of this contract and December 1st, 1884, *and* shall be to the period of six months, and in addition to such payment the second party agrees to pay monthly, as soon after the close of each month as the accounts can be rendered, not later than the 25th of the next ensuing month, one-half of the cost of main-
65 tenance, repairs, and renewals of that part of said Knoxville Branch between Livingston and Jellico, but not including the repairs and renewals of station buildings, platforms, or other buildings not required by the second party in the exercise of the franchises conveyed.

Said second party also to pay one-half of the salaries of the agent and telegraph operators and other station expenses at Jellico paid by said first party, and one-half of the salaries of such telegraph operators at stations between Livingston and Jellico as are required for the movement of trains and whose duties are exclusively for such service, but in case the operator is acting also as station agent then the said second party shall be required to pay but one-quarter of the salaries of such employees.

It is also agreed that the train despatcher for this part of the said

Knoxville Branch, while he will be under the immediate direction of the first party, shall be a joint man, paid equally by the parties hereto and subject to removal at request of said second party.

Seventh. It is mutually agreed that should disagreement
66 arise between the parties hereto as to any act or omission to act under this agreement, or as to the meaning of any provision hereof, the same shall be submitted to arbitration.

An arbitrator shall be named by one party, and, within twenty days after notice thereof in writing, one by the other party, and a third arbitrator shall be chosen by the two arbitrators thus named.

And the three arbitrators shall proceed to hear and determine the matter submitted to them, after giving due notice in writing to each of the parties of the time and place of the hearing, and their decision or a decision of a majority of them shall be final between the parties as to the matter or matters in issue between them, which said decision or award shall be in writing, signed by the arbitrators making it.

And each party to this agreement hereby covenants, for itself and its successors and assigns, forthwith upon the rendering of any decision as aforesaid to comply with and perform the requirements thereof, and, further, to pay any sum or sums of money that may be
67 required to be paid or do any act required to be done by such decision or award, and a judgment may be entered therefor, if neces sary, in any court *to* record in the State of Kentucky for a complete determination of the matter or matters in issue.

A failure to appoint an arbitrator by either of the parties whose duty it is hereunder so to do within twenty days, as hereinbefore provided, shall entitled the arbitrator appointed by the other party to he-r and decide the question or questions at issue as if an appointment had been made by each party hereto, and his decision shall be final between the parties and carried out and enforced, as hereinabove provided.

The expense of all arbitration shall be divided equally between the parties.

Eighth. This contract to take effect on first day of September, eighteen hundred and eighty-four, and as much earlier as the party of the second part may elect, and remain in effect for twenty-five years from the first day of September, 1884, and is to be applicable and effectual in respect to the successors and assigns of the respective parties thereto.

68 In witness whereof the corporate names of the parties hereto have been affixed by the duly authorized officers thereof and attested by the corporate seals of their respective companies this eighth day of August, one thousand eight hundred and eighty-four.

THE LOUISVILLE & NASHVILLE RAILROAD CO.,
By M. H. SMITH, *President.*
R. K. WARREN, *Ass't Secretary.*
THE KENTUCKY CENTRAL RAILROAD CO.,
By C. P. HUNTINGTON, *President.*
R. A. JONES, *Secretary.*

Resolved, That the action of the president of this company in executing and delivering the contract between this company and the Louisville and Nashville Railroad Co., dated August 8th, 1884, be, and the same is hereby, approved and confirmed.

"I, R. A. Jones, secretary of the Kentucky Central Railroad Company, hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the board of directors of this company at a special meeting held Sept. 23d, 1884.

"R. A. JONES, *Secretary.*"

69 It is mutually agreed between the parties hereto that the second clause of this agreement shall be modified by reducing the minimum distance to be used in fixing the compensation of the party of the second part from thirty (30) miles to ten (10) miles.

And that the third clause shall be modified by reducing the payment to be made to the first party by the second party for passengers in cars of the party of the second part from sixty-five *cents* (65) cents each to sixty (60) cents each.

These modified terms to date from time to time at which traffic was first interchanged under this agreement.

LOUISVILLE & NASHVILLE RAILROAD CO.,
By M. H. SMITH, *President.*
KENTUCKY CENTRAL RAILROAD COMPANY,
By C. W. SMITH, *Gen'l Manager.*

And on a day following, to wit, on the 21st day of June, came the complainants, George S. Bliss and Isaac E. Gates, and filed in the clerk's office of this court their demurrer to the intervening bill of complaint of the Louisville and Nashville Railroad Company, which said demurrer is in words as follows, viz:

70 *Demurrer.*

Circuit Court of the United States for the District of Kentucky.

GEO. S. BLISS and ISAAC E. GATES, Complainants,

vs.

THE KENTUCKY CENTRAL RAILROAD COMPANY, Defendant.

Now come the complainants, George S. Bliss and Isaac E. Gates, trustees, and, by protestation, not confessing all or any of the matters and things in the cross-bill of the Louisville and Nashville Railroad Company contained to be true in such manner and form as therein set forth and alleged, do demur to the said cross-bill, and for cause of demurrer show that the said The Louisville & Nashville Railroad Company hath not in and by its said cross-bill herein made

or stated such a case as entitles it in a court of equity to any relief against these complainants as to the matters and things contained in said cross-bill or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said cross-bill, the complainants do demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said cross-bill, and pray
71 that said cross-bill may be dismissed, and that they may be awarded their costs and charges in this behalf most wrongfully sustained.

RAMSEY, MAXWELL & MATHEWS,
Solicitors for Complainants.

STATE OF OHIO, }
Hamilton County, } ss:

William M. Ramsey, of counsel for complainants, being first duly sworn, states that the foregoing demurrer is not filed for delay, but in good faith. Said complainants are both absent from this State at this date.

W. M. RAMSEY.

Sworn to before me and subscribed in my presence this 21st day of June, A. D. 1886.

[SEAL.] ROBERT RAMSEY,
Notary Public, Hamilton Co., Ohio.

William M. Ramsey, of counsel for complainants, hereby certifies that, in his judgment, the foregoing demurrer is well taken and should be sustained.

W. M. RAMSEY.

And on the 21st day of December, 1886, the demurrer of the defendant to the intervening petition of the Louisville and Nashville Company was filed herein; said demurrer is in words as follows:

72 *Demurrer to Intervening Petition of Louisville and Nashville R. R. Co.*

United States Circuit Court, 6th District.

BLISS *et al vs.* KENTUCKY CENTRAL R. R. Co.

Now comes the defendant, The Kentucky Central Railroad Company, and, by protestation, not confessing all or any of the matters and things in the intervening petition and cross-bill of the Louisville and Nashville Railroad Company contained to be true in manner and form as therein alleged, do demur to said intervening petition and cross-bill, and for cause of demurrer show that said intervening petition and cross-bill does not make or state such a case as entitles it in a court of equity to any relief against this defendant as to the matters and things therein contained.

Wherefore, and for other good causes of demurrer appearing in said intervening petition and cross-bill, this defendant does demur thereto and humbly *demur* the judgment of this court whether
73 this defendant shall be compelled to make any further or other answer to said intervening petition and cross-bill, and prays that same may be dismissed, and that the def't be awarded its costs and charges in their behalf wrongfully sustained.

THOS. W. BULLITT,
For Def't.

STATE OF KENTUCKY, }
Kenton County, } *ss:*

Lewis Hood, being duly sworn, says he is the secretary of the Kentucky Central Railroad Co.; that the president and other superior officers are absent from Kentucky; the foregoing demurrer is not filed for delay, but in good faith.

LEWIS HOOD.

Sworn to and subscribed before me this 21 day of December, 1886.
JOS. C. FINNELL, *Clerk.*

Thomas W. Bullitt, of counsel for def't, Kentucky Central railroad, humbly certifies that, in his judgment, the foregoing demurrer is well taken and should be sustained.

THOS. W. BULLITT.

74 And on the 22nd day of December, A. D. 1886, the defendant, The Kentucky Central Railroad Company, filed its answer to the bill of complaint herein; said answer is in words and figures as follows, viz:

The answer of the Kentucky Central Railroad Company to a bill of complaint exhibited against it in the United States circuit court for the district of Kentucky by George S. Bliss and Isaac E. Gates.

To the honorable judges of the United States circuit court for the district of Kentucky, in chancery sitting:

The respondent, reserving to itself the benefit of all just exceptions to said bill, for answer thereto, or to so much thereof as it is advised it is material that it should answer, answers and says—

That it is true that on the 1st day of July, A. D. 1881, this respondent executed and delivered unto the said complainants, George S. Bliss and Isaac E. Gates, 6,037 bonds, whereby this said respondent promised to pay unto the said complainants or bearer the sum of $6,037,000, said bonds being of the denomination of $1,000 each, and all to become due and payable on the 1st day of July, A. D. 1911, reserving, however, unto the said respondent the right to pay said principal sum at any time after the 1st day of July, 1886, in lawful money of the United States.

75 Respondent further states that it is true that it was stipulated in said bonds that this said respondent would pay upon

each and all of the sums evidenced by said bonds interest at the rate of 6 per cent. per annum, payable semi-annually, on the 1st day of January and July of each year, in the city of New York, on the presentation and surrender of the coupons for interest attached to said bonds until the maturity and payment of the principal sums, and to each of said bonds were attached coupons for the installment of interest which would accrue upon said bonds during their currency.

Respondent, further answering, states that it is true, as aforesaid, upon the issuing of said bonds and coupons this respondent agreed and stipulated that it would pay six per cent. interest upon said bonds as aforesaid, but that afterwards, by consent of holders of certain of the bonds hereinafter mentioned, the interest upon said bonds was reduced from the sum of six per cent. to the sum of four per cent., and upon the coupons were stamped the following words, to wit: "Redeemable upon payment of twenty dollars."

Respondent states that of series No. 5 of said bonds, interest thereon being due January 1st, 1884, but five of the coupons attached to said bonds remain outstanding and unpaid; that the said five coupons are not stamped as above mentioned, but that the same call for six per cent., and that the total amount due upon said bonds is one hundred and fifty dollars.

76 Respondent states that of series No. 6 of said bonds, the interest upon which was due July 1st, 1884, but 145 of the coupons attached to said bonds are outstanding and unpaid, and said coupons are not stamped as aforesaid, and were not, therefore, reduced from six to four per cent.; that the total amount of said coupons due is $4,350.

Respondent states that of series No. 7, the interest upon which was due January first, 1885, 3,145 of the coupons attached to said bonds bear the stamp aforesaid, and that the said coupons have, by agreement aforesaid, been reduced from six to four per cent. coupons; that 147 of the coupons attached to said bonds have not been stamped as aforesaid, and call for six per cent. interest instead of four per cent.; that the total amount due upon said bonds at four per cent. is $62,900 and the total amount due upon said bonds at six per cent. is $4,410, and that the total amount of interest due upon said series now outstanding is $67,310.

Respondent further states that of series No. 8, the interest upon which, evidenced by the coupons attached hereto, is due July 1st, 1885, 3,704 of said coupons are stamped as aforesaid, and by the agreement aforesaid they have been reduced from six per cent. coupons to four per cent. coupons; that only 134 of said coupons have not been thus reduced; that the total amount unpaid upon said bonds is $74,080 of the 4 per cent. coupons and $4,020 of the six per cent. coupons; that the total amount unpaid is $78,109.

77 Respondent further states that of series No. 9, the interest upon which was due January 1st, 1886, of the coupons attached to said bonds 3,832 are stamped as aforesaid, and the said coupons, by the agreement aforesaid, were reduced from six per cent. to four per cent., and 134 of said coupons remain outstanding unreduced; that the total amount due upon said bonds at four per

cent. is $76,640 and the total amount due at six per cent. is $4,020, and that the total amount of both is $80,660.

Respondent states that the total amount of coupons upon said bonds as aforesaid are 10,681 coupons reduced from six per cent. to four per cent., all being stamped as aforesaid; that the total amount unreduced are 565; that the total amount due upon said reduced coupons is $213,620; that the total amount due upon those bonds bearing 6 per cent. as aforesaid is $16,950; that the sum total of the interest due by this said respondent upon all bonds outstanding to the 1st of January, 1886, is $230,570.

This respondent submits to this honorable court that it is only liable upon said coupons, the same having become redeemable at 4 per cent. as aforesaid for the sums above set forth.

Respondent says that it is true that it delivered to the said complainants, George S. Bliss and Isaac E. Gates, the said bonds above referred to, to be endorsed by them in accordance with the provisions of a certain mortgage hereinafter referred to and described; that it is true that said coupons were endorsed by the said complainants with the certificate that they were entitled to share
78 in the security of said mortgage, and thus certified that the said bonds were delivered by this said respondent to the persons entitled thereto.

Respondent further states that it is true that on May 1st, 1881, this said respondent, to secure payment of said bonds and interest thereon and the further issue of bonds of like tenor and effect in the amount of $563,000, executed and delivered to the said complainants, George S. Bliss and Isaac E. Gates, its certain mortgage, whereby it conveyed to the said complainants and their successor or successors, for the common and equal benefit of all persons who might be holders of said bonds, its main line of railroad, being the line of railroad extending from the city of Covington, in the State of Kentucky, through the counties of Kenton, Pendleton, Harrison, and Bourbon, to the city of Paris, in Bourbon county, Kentucky, a distance of eighty miles, and all the right, title, and interest of said company in and to a line of railway extending from Paris, Bourbon county, to Lexington, in Fayette county, nineteen miles in length, known and designated as the Maysville and Lexington railway, Southern Division, making in the aggregate ninety-nine miles, and the railroad bed, tracks, rights of way, culverts, bridges, trestles, and all other property belonging to the said respondent, together with its franchises, privileges, powers, and immunities of its said company in respect of and pertaining to said line of railroad, and also any extension of said main line of railroad which might be
79 made after the date of said mortgage towards the northern line of the State of Tennessee or to a junction of the main line with the Louisville and Nashville railroad in the proposed extension of its Lebanon Branch at or near Lexington, or to a junction with any other railroad coming from Tennessee or Virginia into Kentucky or its southern boundary.

Respondent states that it is true that since the date of said mortgage the said Kentucky Central Railroad Company has constructed

an extension of its said line from Paris, Bourbon county, Ky., through the counties of Bourbon, Clark, Madison, and Rockcastle, to Livingston, in Rockcastle county, Kentucky, and that it is true that by the terms of said mortgage aforesaid this said extension and all the property, real and personal and mixed, connected therewith belonging to said respondent and all its franchises pertaining thereto are included in said mortgage and are conveyed to the said trustees, with a first lien thereon, for the security of the holders of the said bonds, and that the said mortgage created in said trustees a first lien upon all the property therein described for the security of the said bondholders.

Respondent further states that it is true that it was contemplated to issue $6,600,000 of bonds, and that it is a fact that it did issue but $6,037,000 of bonds, as stated in the said complainants' bill of complaint.

Said respondent further states that is true that 1,011 of the
80 said bonds were issued to retire an equal amount of bonds of the Covington and Lexington Railway Company, which this said respondent had agreed to pay.

But respondent says that said bonds of the Covington & Lexington Railway Company to the aggregate principal amount of $221,000 have not been exchanged for the bonds of the Kentucky Central Railroad Company aforesaid, nor have they in any way been paid, discharged, or retired; but said bonds of the amount of $221,000 are still outstanding, due, and unpaid, and are secured by the mortgage of said Covington and Lexington Railway Company.

The outstanding bonds consist of—

One bond of series "B" for	1,000
Two hundred and twenty bonds of series "C" for	220,000
Total	$221,000

And respondent further says that of the 1,011 bonds reserved to be used in retiring said Covington and Lexington bonds two hundred and eleven remain in their hands and have not been otherwise used or issued.

Respondent, further answering, states that it is true that it is agreed and stipulated to pay all taxes imposed, assessed, or levied upon any or all of its property, and take care of and preserve its said property in good order and repair, and do all things necessary to preserve the security of said complainants under said mortgage, and that it also undertook and agreed to pay all instalments of interest of said bonds as they respectively matured.

81 Said respondent further states that it is true that it agreed and stipulated that in the event of default in the payment of any taxes or assessments made upon any of its property or the interest upon its said bonds and the continuance of said default for a period of twelve months the whole of the principal of said bonds should become due and payable, and that the said complainants should have the right, upon the request of the holders of a majority in amount of said bonds, to take possession of its said railroad and

of the property embraced in the said mortgage and sell the same and distribute the proceeds thereof to the parties entitled thereto.

Respondent states that it is true that the interest upon a large part of said bonds is unpaid as aforesaid, and has been unpaid for more than twelve months; that a large part of the taxes assessed and claimed to be due and owing by the authorities of the State of Kentucky and of sundry municipal authorities to a large amount have been unpaid and remain unpaid for twelve months.

Further answering, your respondent states that it has not knowledge or information sufficient to form a belief as to whether or not this said mortgaged property is equal in value to the amount of said bonds with interest, and it does not know whether or not the security of the said complainants is being impaired by its continued operation of its said railroad and mortgaged premises.

82 Wherefore the said respondent, having fully answered complainants' bill, prays that its interest herein be protected by this honorable court; that it may be hence dismissed with its reasonable costs in this behalf expended; and so it will ever pray, etc.

THOS. W. BULLITT,
For Ky. Central R. R. Co., Defendant.

83 BLISS & GATES
vs.
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

This cause coming on to be heard upon the demurrer of the bondholders, also the demurrer of the Kentucky Central Railroad Company, to the intervening petition of the L. & N. Railroad Company, came the various parties, by their respective counsel, and made argument to the court; whereupon the court, not being advised of the judgment proper to render herein, takes time, and said cause is submitted on said demurrer.

And on the 8th day of January, A. D. 1887, the court filed its written opinion herein, which said opinion was in words and figures as follows:

Circuit Court of the United States for the District of Kentucky.

GEORGE S. BLISS and ISAAC E. GATES, Trustees,
vs.
THE KENTUCKY CENTRAL RAILROAD COMPANY.

Hearing on demurrer of complainants and defendants to in-
84 tervening petition of the Louisville and Nashville Railroad Company.

On March 17th, 1886, the Louisville and Nashville R. R. Co. filed its intervening petition in this cause, setting up a claim of $78,932.25, with interest, against the Kentucky Central R. R. Co., growing out of the latter's failure to comply with the terms and stipulations of a certain contract entered into between the two companies, which is

made an exhibit to the petition and which went into effect on the 1st Sept., 1884, and was to continue in force for the period of twenty-five years thereafter. The petitioner claims that its said demand, under the 8th section of an act passed by the Legislature of Kentucky and approved March 20th, 1871, amendatory of the chart-s of the Kentucky Central R. R. Co., constitutes a lien upon the rolling stock of the latter's company prior to that of the mortgage made to complainants, in May, 1881, to secure the payment of bonds therein described and herein sought to be enforced.

The 8th section of said act approved March 20th, 1871, provides "that to the extent of all claims of persons for injuries to stock or persons or for materials furnished said company or breach of contract the claimant shall have a lien upon the rolling stock of
85 said company, any mortgage to the contrary notwithstanding.

The complainants and defendant demur to the petition, and in support of this demurrer insist upon two leading propositions:

First. That it does not sufficiently appear from the petitioners that the Kentucky Central R. R. Co. ever accepted the amendments of its charter under said act, approved March 20th, 1871; and,

Secondly. That the contract between the two corporations, out of which the petitioners' claim arises, was void, became "*ultra vires*" of the contracting companies, and contrary to public policy.

The act of Feb'y 22, 1871, incorporating the Kentucky Central Railroad Co., excepted and exempted it from the operation of an act entitled "An act *receiving* the right to amend or repeal charters or other laws, approved February 14th, 1856;" so that its charter was not amendable as proposed by the act of March 20th, 1871, without its consent or acceptance of said amendment.

The petitioner alleges that said Kentucky Central R. R. Co., in order to extend its line of railroad from Lexington, Fayette county, Kentucky, to which point it had been constructed, to the southern boundary line of — State of Kentucky, or to any intermediate
86 point, procured to be passed by the Legislature of the Commonwealth of Kentucky an act entitled "An act to amend an act entitled An act to incorporate the Kentucky Central Railroad Co., approved March 20th, 1871," by the second section of which act the board of directors of said company was authorized, for the purpose of making such extension of and building branches thereof, to increase its capital stock and borrow money and issue bonds therefor, &c., &c., and for payment thereof might mortgage the said road, its entire property, equipments, and franchises. And your orator says that under and by virtue of the power conferred by said act, and for the purpose aforesaid, said Kentucky Central R. R. Co. constructed an extension of its line of railroad from Lexington aforesaid to Livingston aforesaid.

"It is further avowed that said act of March 20th, 1871, is in full force and effect;" that "the contract sued on herein was made under and protected by the aforesaid 8 section of said act," and that "said mortgage (to complainants) was executed, advised, and accepted under and subject to all the provisions of aforesaid act (March 20,

1871), and the lien secured thereby, if one is secured, is in-
87 ferior and subject to the lien of your orator acquired, as afore-
said, under and by virtue of said 8th section of the act afore-
said." From the covenants of the petitions it appears that the Kentucky Central R. R. Co. procured the papers of the act of March 20th, 1871; that it accepted the limits of said act and acted thereunder in extending its railroad to Livingston; that the contract sued on was made under and protected by said act; that the mortgage to complainants was executed and accepted under and subject to all the provisions of said act, and that said act "is in full force and effect."

Those allegations constitute a sufficient averment of the acceptance by the Kentucky Central R. R. Co. of the act approved March 20th, 1871.

And said act, under the present demurrer, may properly be considered as forming a valid and subsisting amendment by the charter of the Kentucky Central R. R. Company.

The question then presents itself, Had the two corporations authority to enter into the contract set up by petitioners as the basis of its claim or was that contract void either for the reason that it was "*ultra vires*" of the contracting companies or contrary to public policy?

88 The main features of the contract were the following:

The Louisville and Nashville R. R. Co., which has previously, at a cost of $2,000,000, constructed a line of its road from Lexington, Ky., to Jellico, on the line between the States of Kentucky and Tennessee, the same forming an extension of its Lebanon Branch, which, under its charter, it had full authority to build, agreed to give the Kentucky Central R. R. Co. equal traffic rights with itself in any respect over that portion of said branch road between Livingston and Jellico for all traffic between all points in and beyond said Kentucky Central R. R. Company lines and all points in Tennessee and beyond, with the privilege of running its own trains under its own trainmen, at its own cost and expenses, and in accordance with schedules satisfactory to itself, but all trains and trainmen to be run subject to and governed by the rules and regulations governing the movements of the L. & N. trains, the trains of said Kentucky Central R. R. Co. at all times to have equal rights with the trains of the same class belonging to the L. & N. R. R. Co.

In consideration of the rights and privileges then *conformed* and granted, the Kentucky Central R. R. Co. agreed to pay the Louis-
89 ville and Nashville R. R. Co. six per cent. per annum on $1,000,000, being one-half of the cost of constructing the road, for 25 years from Sep. 1, 1884, and further agreed to pay monthly one-half of the cost of maintenance, repairs, and renewals of said line of road, not including the repairs and renewals of station buildings, platforms, or other buildings not required by the Kentucky Central Co. in the exercise of the franchises conveyed. Other stipulations of a minor character, relating to rates, arbitration of differences, &c., need not be specially noticed. The Kentucky Central R. R. Co. exercised its traffic rights under said contract from Sep. 1, 1884,

until April 1, 1885, when it repudiated and abandoned said contract, having previously paid the semi-annual interest installments on the $1,000,000 *dollars* due under said tract on the 1st day of December, 1884. The Kentucky Central R. R. Co. has, prior to the execution of said contract, extended its line of road to Lexington, so that the Louisville and Nashville R. R. Co.'s line from Lexington to Jellico station formed a connecting road that enabled the Kentucky Central to reach the southern boundary of the State.

It is claimed for defendants that the Kentucky Central R.
90 R. Co. was authorized and *impuned* by its charter to contract for itself such an extension from Livingston to Jellico, and that the contract in question was an abandonment on its part of the public duty and obligation thus imposed upon it, and, as a result of such abandonment of its duty, to build that extension for itself, there has been lost to the public that competition between itself and the Louisville and Nashville R. R. Co. which the Legislature of Kentucky contemplated and made the condition for the grant of its purchasers.

An examination of its charter fails to disclose any express requirement or duty on the part of the Kentucky Central R. R. Co. to construct either a main or branch line of its road from Livingston to Jellico station.

The Louisville and Nashville R. R. Co., under its charter and amendments thereto, was authorized and *impuned* to build the Lebanon Branch and extend the same in the direction crossing the line between Livingston and Jellico, which it lawfully constructed, and in so doing formed a connecting line to the southward with the Kentucky Central R. R. Co. at Livingston. Having thus formed connecting lines of road, had those two corporations authority to enter into the aforesaid contract by which traffic rights were
91 granted by the L. & N. R. R. Co. to the K. C. R. R. Co. in the terms and stipulations already stated? This must depend upon the proper construction of the contract in the light of the *persons* conferred by *this* respective charter- upon the two contracting corporations.

It is too well settled to need the citation *with* the general laws applicable to the same — constitute the measure of its powers, that its rights, duties, and franchises cannot be transferred without the consent of the Legislature, and that the proper performance of its functions, being the consideration of the public grant, any contract which disables it from performing these functions or undertakes without the consent of the State to transfer to others the rights and *and* powers conferred by the charter is a violation of the contract with the State, and is void as against public policy. Hence it has been held that a railway company can neither leave its road nor transfer its purchas- to another corporation except by legislative permission or sanction.

If, therefore, the contract in question involve- the surrender or transfer of corporate duties, functions, or franchises on the part of either of said companies, or if it disables either in any essen-
92 tial particulars from the proper performance of its obligations

to the public, it cannot be sustained and enforced unless sanctioned by legislative authority. If the Kentucky Central R. R. Co. has imposed upon it the duty by its charter of constructing its line between Livingston and Jellico stations, so as to form a complete line with the L. & N. R. R. Co., as contended by counsel for defendants, there is nothing in the present contract to restrict or forbid it from building such line at any time. The contract does not impose any such restraint.

It calls for no surrender of its purchases by the Kentucky Central R. R. Co. It neither involves a transfer of any of its rights nor disables it from performing all its corporate functions and obligations to the public.

On the contrary, it enlarges its facilities and enables it the more efficiently to discharge its duties to the public it was created to serve.

The contract is in legal effect and operation not a surrender or transfer of the power and franchises of either company to the other, but an agreement for running and traffic arrangements between them on connecting lines calculated to promote the interests of each and extend the facilities of the public. It is difficult to see
93 what public policy is contravened by the provisions of such a contract.

But it is clear from an examination of this respected charter that said companies had full and ample authority to make and enter into said contract. By the act of its incorporations approved Feb. 22nd, 1871, the Kentucky Central R. R. Co. succeeded to all the rights, power, privileges, immunities, and franchises of the Covington & Lexington Railroad Co., originally chartered in March, 1847, under the name of the Licking and Lexington R. R. Co. By the 18th section of said Covington and Lexington (or Licking & Lexington) Railroad Co. it is provided "that any other railroad company which has been or may hereafter be chartered by laws of this State may join and connect any railroad with the road hereby contemplated on such terms as said company may agree," &c.

Again, by an act approved Febr'y 27th, 1849, amending the charter of said Covington & Lexington R. R. Co., it was provided (§ 5th) "that when any other railroad company shall connect with said road or any of its branches, then the terms of transportation, both cars and locomotives, &c., shall be agreed upon by the companies."

By another amendment of its charter, approved Febr'y 6th,
94 1854, "the said company may connect with any other line or lines of railroad and any cars or freight from and for any other company which may be agreed upon and charge reasonable rates therefor."

And, finally, by the 6th section of the aforesaid act of March 20th, 1871, which under the allegations of the petition the Kentucky Central R. R. Co. is held to have accepted, it is provided "that said company may consolidate its main line or branches hereby authorized with any other railroad connecting therewith on such terms as may be agreed upon by a majority in interest of the stockholders of both companies."

Under these grants of authority conferred directly and by reference and adoption on the Kentucky Central R. R. Co. to join and connect with any other railroad and to enter into agreements with such connecting lines of railroad in relation to transportation, both cars, locomotives, &c., it hardly admits of any doubt or question that the Kentucky Central R. R. Co. had ample power and legislative sanction for entering into the contract with the Louisville and Nashville R. R. Co., which is made the foundation of the latter's claims.

The Louisville and Nashville R. R. Co., under its original
95 charter and various amendments thereof, was likewise invested with full authority to make the contract in question.

By section 18th of the act incorporating said company it was provided "that it shall not be lawful for any other company or any person or persons to travel upon or use any of the said roads of said company or to transport persons or property thereon without the license and permission of the president and directors thereof."

This clearly implies that with such license and permission of the president and directors other companies might use its road or roads.

It was further provided in the same section "that any and all such railway- or railroads hereafter constructed may connect and join with the road hereby contemplated."

By the 2nd section of an amended act approved March 5th, 1850, said company was authorized to *contract* a branch of said road to the Mississippi river & any other branch said company may desire."

By the 4th section of an act for the benefit of the Louisville & Nashville R. R. Co., approved March 7th, 1854, it was enacted "that it shall be lawful for said Louisville & Nashville R. R. Co. to
96 unite their road with any other road connecting therewith upon such terms and conditions as may be agreed upon between the said Louisville & Nashville R. R. Co. and such other company as they may desire to unite their said road with."

It was further authorized by another amendatory act of the Kentucky Legislature, approved January 17th, 1856, to extend any branch road and to purchase and hold any road constructed by another company, or agree on terms to receive the cars of other roads on this said road.

It is further *impuned* by an act Feb'y 28th, 1860, amending its chart-s, to make arrangements with other companies for through freights and passage from distant points on such terms as they may agree from time to time.

Those grants conferred upon the Louisville & Nashville R. R. Co. express authority to unite connecting roads and make such traffic arrangements with them as might be agreed upon from time to time, including the necessary transportation of the cars of other companies over its road. In these legislation grants is formed ample authority to support the contract in question even if no such authority was found in the charter of the Kentucky Central R. R.

Co., for that which the Louisville and Nashville R. R. Co may
97 lawfully do under power expressly conferred in the way of uniting or contracting with other companies chartered by the same State cannot properly be regarded as illegal, "*ultra vires*,"

or contrary to public policy in respect to other companies, even though their charter should be silent as to such powers.

But the contracted power of the Kentucky Central R. R. Co in respect to connections with other roads and traffic arrangements therewith are sufficiently broad and ample to sustain the variety of the contract in question between itself and the Louisville and Nashville R. R. Co.

The charter of these two companies confer as full authority to make said contract as existed in the case of Branch *vs.* Jesup, 106 U. S., pages 475 to 481, which was sustained by the Supreme Court.

The cases relied on by counsel in support of the demurrer do not conflict with our conditions in respect to the present contract, which is held to be a valid and binding agreement between said companies.

It is not deemed necessary to discuss or determine the point argued by counsel for petitioners that even if the contract was "*ultra vires*" as to the Kentucky Central R. R. Co. it could not be allowed to set up and rely on such a defense after having received and taken
98 benefit thereunder. In the opinion of the court the contract between the two companies is open to no valid objection and is binding upon the Kentucky Central R. R. Co. For the breach of that contract the Kentucky Central R. R. Co. is liable to the petition-s.

If, as hereinafter assumed, under the allegations of the petition the Kentucky Central Railroad Co. has accepted the act of March 20th, 1871, amending its charter, then under the 8th section of said act the petitioner is entitled to a lien "upon the rolling stock of said company, any mortgage to the contrary notwithstanding," for the breach of said contract in or under the acceptance of said act of March 20th, 1871, is hereafter to be made a question of controverted fact, as counsel for the demurrer intimated on the argument it would be premature to discuss or determine the question as to the extent or character of petitioners' said lien under said 8th section, whether superior, concurrent, or inferior to the lien of complainants' mortgage.

That question is therefore reserved for the present until it is definitely settled whether the Kentucky Central R. R. Co. has or has not, as a matter of fact, accepted said amendatory act of March 20th, 1871.

The demurrer of the complainants and of the Kentucky
99 Central R. R. Co. is overruled and disallowed with costs, and said parties are allowed until the February rules, 1887, to answer said petition of the Louisville & Nashville R. R. Co.

The clerk of U. S. circuit court, at Covington, Kentucky, will enter decree accordingly.

HOWELL E. JACKSON,
Circuit Judge.

And on the 8th day of January, A. D. 1887, an order was entered herein as follows, viz:

GEORGE S. BLISS and ISAAC E. GATES, Trustees,
ag'st
THE KENTUCKY CENTRAL RAILROAD COMPANY.

This cause coming on to be heard at this term *in* the respective demurrers of the complainants, George S. Bliss and Isaac E. Gates, trustees, and the defendant, The Kentucky Central Railroad Company, to the intervening petition of the Louisville and Nashville Railroad Company, was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that each of said demurrers be, and same is hereby, overruled; and it was further ordered, adjudged, and decreed that said intervener, The
100 Louisville and Nashville Railroad Company, recover of said George S. Bliss and Isaac E. Gates, trustees, and the Kentucky Central Railroad Company, respectively, its costs incurred in reference to each of said demurrers; and said defendants are allowed until February rules to answer said petition of the Louisville and Nashville Railroad Company.

And on a day following, to wit, on the 22nd day of January, A. D. 1887, the following order was entered herein, viz:

GEORGE S. BLISS and ISAAC E. GATES
vs.
THE KENTUCKY CENTRAL RAILROAD COMPANY.

This day came the L. & N. R. R. Co., intervener herein, by her counsel, Messrs. Barnett, Noble and Barnett, and moved the court for leave to file a supplemental intervening bill and twelve accompanying exhibits.

The court being advised and it appearing that the parties in interest have been duly served with notice of the making of said motion, said motion is granted; and it is ordered that said supplemental intervening bill and exhibits be, and same are, now filed.

101 The supplemental intervening bill mentioned in the following order was in words and figures as follows, viz:

To the honorable the judges of the circuit court of the United States for the district of Kentucky, in chancery sitting:

Your orator, the Louisville & Nashville Railroad Company, by leave of court first obtained, brings this its supplemental intervening bill of complaint against the Kentucky Central Railroad Company and George S. Bliss and Isaac E. Gates, trustees; and thereupon your orator shows unto your honors that your orator, the said Louisville and Nashville Railroad Company, and the said Kentucky Central Railroad Company are each corporations incorporated and organized by and under the laws of the Commonwealth of Kentucky, with power and authority to contract and be contracted with

and to sue and be sued, and are citizens of said Commonwealth; that said George S. Bliss is a citizen of the State of New York, and said Isaac E. Gates is a citizen of the State of New Jersey.

Your orator says that said George S. Bliss and Isaac E. Gates, as trustees, on the 28th day of January, A. D. 1886, filed their bill of complaint in this honorable court against said Kentucky
102 Central Railroad Company, wherein they, as trustees thereunder, set up and sought to have foreclosed a certain mortgage on the railroad, rolling stock, &c., of said Kentucky Central Railroad Company therein described, alleged to have — executed and delivered by said railroad company to said Bliss and Gates, as said trustees, to secure the payment of six hundred of said company's bonds of one thousand dollars each, and to have said railroad and its rolling stock, &c., sold and the proceeds of said sale applied in satisfaction of six thousand and thirty-seven of said bonds.

No answer having been filed to said bill of complaint, your orator, by leave of court, on the — day of ——, A. D. 1886, filed in said suit its intervening bill, making complainants, George S. Bliss and Isaac E. Gates, as trustees, and defendant, said Kentucky Central Railroad Company, defendants thereto, therein setting up and relying on a certain written contract executed by and between your orator and said Kentucky Central Railroad Company on the 8th day of August, A. D. 1884, a copy of which contract was filed with and made part of said intervening bill as Exhibit "A," by and under which contract your orator claimed that said Kentucky Central Railroad Com-
103 pany was indebted to your orator in the sum of $78,932.25, $60,000 thereof for interest on one million dollars, one-half of the cost of the railroad from Livingston to Jellico aforesaid, from December 1st, 1884, to December 1st, 1885, and $18,932.25 as one-half the cost of *as one-half the cost of* maintenance, &c., of said road from Livingston to Jellico up to December 1st, 1885; and that to secure the payment of said sum of $78,932.25 it had a lien on the rolling stock of the railroad of said Kentucky Central Railroad Company therein described under the 8th section of the amended charter of said company, approved March 20th, 1881, superior to any lien of said trustees under their said mortgage.

A demurrer was filed to said intervening bill by said Bliss and Gates, trustees, and by said Kentucky Central Railroad Company, and said demurrers were by the court overruled, and no other pleadings have been filed in said suit by either of said parties.

Your orator says that both your orator and said Kentucky Central Railroad Company are bound by the covenants and agreements contained in aforesaid written contract, as in said intervening bill set out, for the term of twenty-five years from and after the
104 1st day of September, A. D. 1884, and that your orator has during all the time since December 1st, A. D. 1885, as well as during all the time from September 1st, A. D. 1884, to December 1st, A. D. 1885, in compliance with the terms of said contract, conceded and given to said Kentucky Central Railroad Company equal traffic rights with itself in every respect over said line of railroad

between Livingston aforesaid and Jellico aforesaid for all traffic between all points on and beyond, with the privilege to said Kentucky Central Railroad Company of running its own trains over said road under its own trainmen, at its own cost and expense, and in accordance with schedules satisfactory to itself, and it has during all that time been ready to concede and give to said Kentucky Central Railroad Company's trains equal rights with its own trains of the same class on and over said road.

And has during all that time performed and complied with all the covenants and agreements of said contract by it to be performed and complied with.

And your orator says that in consideration of the compliance by your orator of the covenants and agreements of said contract
105 as afore*aforesaid* and of the construction by it at its own cost of the said railroad from Livingston aforesaid to Jellico aforesaid *by* said Kentucky Central Railroad Company, in and by said contract, became bound and promised to pay to your orator $60,000 *is* the interest on one million dollars, one-half the cost of said road, from December 1st, A. D. 1885, to December 1st, A. D. 1886, one-half thereof, or thirty thousand dollars, on the 1st day of June, A. D. 1886, and the other half, or thirty thousand dollars, on the 1st day of December, A. D. 1886; and in addition thereto said Kentucky Central Railroad Company, under and by the terms of said contract, become bound and promised to pay your orator monthly for and during each month from and including the month of December, A. D. 1885, to and including November, A. D. 1886, one-half of the cost of maintenance, repairs, and renewals of said road between said Livingston and said Jellico, not including the repairs and renewals of station buildings, platforms, or other buildings not required by said Kentucky Central Railroad Company in the exercise of the franchises conveyed, said payments to be made as soon after the close of each month as the accounts could be rendered—
106 not later than the 25th day of the succeeding month.

And your orator says that it has paid out and expended for maintenance, repairs, and removals of said railroad from Livingston to Jellico aforesaid, not including the repairs and removals of station buildings, platforms, and other buildings not required by said Kentucky Central Railroad Company in the exercise of its rights and privileges conveyed by said contract from and including the month of December, A. D. 1885, to and including the month of November, A. D. 1886, thirty thousand eight hundred forty-three dollars and eighty-six cents ($30,843.86) as follows, to wit:

For the month of December, A. D. 1886, the sum of $1,095.77; for the month of January, A. D. 1886, the sum of $1,608.93; for the month of February, A. D. 1886, the sum of $2,054.23; for the month of March, A. D. 1886, the sum of $2,137.05; for the month of April, A. D. 1886, the sum of $3,044.71; for the month of May, A. D. 1886, the sum of $3,860.54; for the month of June, A. D. 1886, the sum of $2,370.53; for the month of July, A. D. 1886, the sum of $2,655.76; for the month of August, A. D. 1886, the sum of $2,972.46; for the month of September, A. D. 1886, the sum of $2,916.80; for the

month of October, A. D. 1886, the sum of $3,356.50; for the month of November, A. D. 1886, the sum of $2,770.64.

107 An itemized account of aforesaid costs and expenses of such maintenance, repairs, and renewals as aforesaid for each of said months, was one the — day of ——, and before the 25th day of the succeeding month, duly rendered and presented by your orator to the said Kentucky Central Railroad Company, and payment of one-half of the amount thereof was then and there demanded, which payment was refused; and the one-half of each of such monthly accounts so owing and due by said Kentucky Central Railroad Company to your orator, amounting in all to the sum of $15,421.93, is due and wholly unpaid, and all of said $60,000 aforesaid remains due and wholly unpaid.

Said monthly itemized accounts are filed herewith and made part hereof, marked "Exhibit 1," "Exhibit 2," "Exhibit 3," "Exhibit 4," "Exhibit 5," "Exhibit 6," "Exhibit 7," "Exhibit 8," Exhibit 9," "Exhibit 10," "Exhibit 11," & "Exhibit 12," respectively.

Your orator says that by and under the 8th section of the act amendatory of the *character* of the said Kentucky Central Railroad Company, approved March 20th, A. D. 1871, which section is in these words, to wit:

"That to the extent of all claims of persons for injuries to
108 stock or person, or for material furnished said company, or breach of contract, *or for material furnished said company, or breach of contract,* the claimant shall have a lien upon the rolling stock of said company, any mortgage to the contrary notwithstanding"—it has a lien on the rolling stock of said Kentucky Central Railroad Company used on or in connection with its railroad, extending from Covington, in Kenton county, Kentucky, to Livingston, in Rockcastle county, in same State, it being the same and all the rolling stock embraced in aforesaid mortgage from said company to said Bliss and Gates, trustees; and your orator says its said lien is prior and superior to the lien of said trustees or their *cestui qus trust* under said mortgage.

Your orator says that the extension of the railroad of the said Kentucky Central Railroad Company from Lexington, Kentucky, to Livingston aforesaid was authorized to be and was constructed by it and the money there*of* raised and the aforesaid mortgage and the bonds it was given to secure were executed, delivered, and accepted under and by virtue alone of the aforesaid amended charter
of said railroad company, approved March 20th, 1871, as
109 aforesaid, and said amendment was procured to be enacted and was accepted by said company.

Wherefore your orator prays that this may be taken as supplemental to its intervening bill herein; that said Kentucky Central Railroad Company be adjudged to be indebted to your orator the aforesaid sums of $60,000 and $15,421.93, with interest thereon from the maturity of each of said debts; that it be adjudged a lien to secure the payment of said debts on the aforesaid rolling stock of said company superior to any lien secured by aforesaid mortgage, and that it also have a lien superior to said mortgage lien on the

value of the use of said rolling stock while said road is in the hands of and operated by its receiver, and that out of the sale of said rolling stock and the money obtained by receiver for the use of the same while in his hands its aforesaid debt, with interest, may be satisfied, and that it have such other and further relief in the premises as to your honors shall — meet. May it please your honors to grant under your orator a writ of subpœna, to be directed to the said Kentucky Central Railroad Company and said George S. Bliss and said Isaac E. Gates, trustees, thereby commanding them and each
110 of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, and perfect answer make, but not under oath, to all and singular of the premises.

BARNETT, NOBLE & BARNETT,
Solicitors for Lou. & Nash. R. R. Co.

And on the 18th day of February, A. D. 1887, the answer of complainants to the intervening petition and to the amended intervening petition of the Louisville and Nashville Railroad Company was filed herein, which said answer is in words and figures as follows, viz:

Answer of Complainants in the Intervening Petition of the Louisville & Nashville Railroad Company and the Amended Intervening Petition of said Company.

Circuit Court of the United States, District of Kentucky.

GEORGE S. BLISS *et al.*, Complainants,
vs.
THE KENTUCKY CENTRAL RAILROAD COMPANY, Defendant.

Now come the complainants and say that they deny that the agreement set forth and alleged in said intervening petition was made by the Kentucky Central Railroad Company, for they
111 say that the stockholders of said company never assented to or ratified the same, as required by law.

Further answering, the complainants say that they deny that the act of March 20th, 1871, of the Legislature of Kentucky was accepted by the said The Kentucky Central Railroad Company, and they allege that in the absence of said acceptance said act did not become a part of the charter of said Kentucky Central Company.

Further answering, the complainants say that of the bonds issued and secured by the mortgage or deed of trust made to themselves, as set forth in their bill of complaint herein filed, $779,000, viz., 779 of said bonds of the denomination of $1,000 each, were issued in exchange for a similar number of bonds of like amount, secured by the mortgage of the Covington & Lexington Railroad Company to James Winslow, which is set forth in the cross-petition of E. H. Pardee herein filed; said mortgage was made and said bonds issued in 1853, and the bonds issued in exchange therefor as aforesaid are

entitled, as complainants are advised and here allege, to all the equities which belonged to the said original bonds, and therefore are superior in right to the alleged lien of the Louisville & Nash-
112 ville Company upon the rolling stock of the Kentucky Central Company, and are entitled to be paid in full before any part of the proceeds of the sale of the property of the Kentucky Central Company or any part thereof shall be appropriated to the payment of any other lien.

Wherefore the complainants pray the court to dismiss the said intervening petition and the amendment thereto.

RAMSEY, MAXWELL & MATHEWS,
Solicitors for Complainants.

And on the 7th day of March, A. D. 1887, the answer of the Kentucky Central Railroad Company to the intervening and the supplemental intervening bill of the Louisville and Nashville Railroad Company was filed herein, which said answer is in words and figures as follows:

United States Circuit Court for the District of Kentucky. In Chancery.

GEORGE S. BLISS *et al.*, Complainant-,
versus
KENTUCKY CENTRAL RAILROAD CO., Defendant. } No. 1651.

Answer of defendant, The Kentucky Central Railroad
113 Company, to the intervening bill and the supplemental intervening bill of the Louisville and Nashville Railroad Company, filed herein, says:

1.

This defendant denies that it procured to be passed by the Legislature of the Commonwealth of Kentucky an act entitled "An act to amend an act entitled An act to incorporate the Kentucky Central Railroad Company," approved March 20, 1871, and defendant denies that under or by virtue of the powers conferred by said act it constructed an extension of its line of railroad from Lexington to Livingston, or procured to be constructed by the Louisville and Nashville Railroad Company the line of railroad from Livingston to Jellico in said original and supplemental bill mentioned.

Defendant denies that the alleged contract between this defendant and the Louisville and Nashville Railroad Company set forth in said original and supplemental bill was made, or that the debt sued for was contracted, or that the said line of railroad between Livingston and Jellico *were* constructed by the Louisville and Nashville railroad under, or that said alleged contract or debt was protected by the 8th section of the aforesaid act of the Legislature of Ken-
114 tucky, or that said alleged debt constitutes a lien upon the rolling stock of this defendant or on any of its property.

This defendant further states that said act approved March 20, 1871, was never accepted by this corporation as an amendment of its charter, and did not become and is not a part of its charter.

2.

This defendant denies that it ever made or entered into the contract with the Louisville and Nashville Railroad Company which is mentioned and set forth in the said original and supplemental bill, and denies that the said alleged contract mentioned in the said original bill and filed therewith as Exhibit "A" in the act of this defendant.

3.

Defendant says that the Louisville and Nashville Railroad Company had no power or authority under its charter to make, execute, or deliver the said original contract mentioned and set forth in said original and supplemental bill.

4.

The defendant, further answering, says, that for the terms of the alleged contract mentioned in said intervening bill the defendant refers to said instrument itself.

Defendant, denying that said alleged contract is its act and
115 deed, further denies that during all the time since the execution and alleged taking effect of the contract set forth in the said bill the intervening plaintiff has conceded or given to defendant equal traffic rights with itself over that portion of the Knoxville Branch of said plaintiff's road between Livingston and Jellico stations for traffic on and beyond same, or that at any time plaintiff has so done.

Defendant denies that from the time said contract took effect, or that at any time since the execution thereof, defendant has exercised or been permitted to exercise traffic rights equal to those of plaintiff over said branch road between Livingston and Jellico stations by transporting freight and passengers over same, as set forth in the bill or otherwise.

Defendant denies that plaintiff has always been or has at any time been ready to have any disagreement arising between plaintiff and defendant as to any act or omission under said contract, or as to the meaning of its provisions submitted to arbitration, as provided herein, or to submit to the award of such arbitrators.

To the contrary, defendant says that, in violation of the true
116 intent, meaning, and object of said contract, if same be a valid contract, plaintiff has steadily and persistently since its execution refused to concede or give defendant equal rights of traffic with itself over said branch road, and has by its own acts excluded defendant from all traffic to and from points beyond said branch.

Plaintiff has also filed and refused to submit any of the matters involved in its said bill to arbitration, as it was bound to do under said contract, before bringing suit.

Defendant denies that it is indebted to or became bound to pay said plaintiff the sum of thirty thousand dollars or any sum whatever on account of the matters set forth in said bill, or that defendant agreed or is bound to pay same.

Defendant, further answering, says that it has no knowledge or information sufficient to enable it to form a belief whether or not said intervening plaintiff expended for costs of maintenance, repairs, and renewals, as set forth in said original and supplemental intervening bill, and several sums of money therein stated to be expended for the purpose aforesaid, but defendant denies that it agreed or bound itself to pay the sums of money or any of them set
117 forth therein and claimed to be due the plaintiff, and defendant denies that said intervening plaintiff is entitled to recover of this defendant any of the said sums of money.

The defendant further denies that it caused or procured the intervening plaintiff to construct the line of railroad mentioned in said bill, from Livingston to Jellico, and denies that the contract set forth in said intervening bill or the alleged debt set forth therein as due by this defendant was made or contracted under or is protected by the 8th section of the act of March 20, 1871, mentioned in said bill, or that the plaintiff has a lien prior or superior to all others, or any lien at all upon the rolling stock or upon any property of this defendant.

5.

Defendant, further answering, says that from the date of the execution of said alleged contract the plaintiff has steadily and persistently refused to allow or give to defendant equal rights of traffic with itself over the said branch road between Livingston and Jellico stations for traffic beyond same, but has excluded defendant from such traffic, and by its own act has rendered it impossible for
118 defendant to obtain or compete for traffic from any point beyond Jellico or Livingston stations, or to obtain any advantage or benefit whatever from such traffic or from said contract; and plaintiff by its own act has steadily and persistently disregarded and violated said contract in all its essential provisions, and has deprived defendant of any possible advantage or benefit arising therefrom, and by reason thereof said contract, if valid in its inception, has been abrogated, annulled, and is no longer binding upon this defendant.

Wherefore defendant prays to be hence dismissed with its reasonable costs.

THOS. W. BULLITT,
Att'y for Def't, Ky. Central Railroad Co.

And on the 7th day of March, A. D. 1887, came the Louisville and Nashville Railroad Company and filed its replication to the answer of the complainants to its intervening and amended intervening petition herein; which said replication is in words as followeth, viz:

Replication.

Circuit Court of the United States for the District of Kentucky.

GEORGE S. BLISS *et al.*, Complainants,

vs.

119 KENTUCKY CENTRAL RAILROAD CO., Defendant.

The replication of the Louisville & Nashville Railroad Company, intervening petitioners, to the answer of complainants, George S. Bliss *et al.*, to the intervening petition and amended intervening petition of said Louisville and Nashville Railroad Company.

This repliant, for replication to said answer, saith that it will aver and *approve* its said petition and amended petition to be true, certain, and sufficient in law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said intervening petition and amended intervening petition it hath already prayed.

BARNETT, NOBLE & BARNETT,
For L. & N. R. R. Co.

And on the 7th day of March, A. D. 1887, came the Louis-
120 ville and Nashville Railroad Company and filed its replication to the answer of the defendants to its intervening and amended intervening petition herein, which said replication is in words as follows, viz:

Replication.

Circuit Court of the United States for the District of Kentucky.

GEORGE S. BLISS *et al.*, Complainants,

vs.

KENTUCKY CENTRAL RAILROAD COMPANY, Defendant.

The replication of the Louisville & Nashville Railroad Company, intervening petitioner, to the answer of defendant, Kentucky Central Railroad Company, to the intervening petition and amended intervening petition of said Louisville & Nashville Railroad Company.

This repliant, for replication to said answer, saith that it will aver and *approve* its said petition and amended petition to be true, certain, and sufficient in law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this

repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true;
121 all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said intervening petition and amended petition it hath already prayed.

BARNETT, NOBLE & BARNETT,
For L. & N. R. R. Co.

BLISS and GATES, Trustees, *vs.* THE KY. CENTRAL R'Y CO.

Onm otion of intervenor, The Louisville & Nashville Railroad Company, it has leave to retake the depositions of Milton H. Smith, Cushman Quanvier, R. E. Sewell, C. F. Morrell, and C. E. Raney.

Upon due notice to complainants and defendant or their respective counsel, and *in* like motion of said Louisville and Nashville Railroad Company, it has the further time until the 1st day of June next to complete the taking of its depositions in the above-styled action.

BLISS and GATES *vs.* THE KY. CENTRAL R'Y CO.

By agreement the matters and questions arising under the
122 *internor* of The Louisville & Nashville Railroad Company in the above-styled case are specially set for hearing at chamber-, in Cincinnati, Ohio, June 2, 1887, before Justice Stanley Mathews & Hon. Howell E. Jackson, circuit judge.

BLISS and GATES *vs.* KENTUCKY CENTRAL R. R. CO.

This day came the Louisville & Nashville R. R. Co., by their attorneys, Messrs. Barnett, Noble and Barnett, and, by leave of court, filed herein its second supplemental bill and five exhibits thereto, numbered, respectively, from one to five.

Came the trustees, Geo. S. Bliss and Isaac E. Gates, by Wm. M. Ramsey, Esq., and entered their appearance herein.

The second supplemental petition mentioned in the foregoing order is in words and figures as follows, viz:

To the honorable the judges of the circuit court of the United States for the district of Kentucky, in chancery sitting:

Your orator, the Louisville & Nashville Railroad Company, by leave of court first obtained, brings this its second supple-
123 mental intervening bill of complaint against the Kentucky Central Railroad Company and George S. Bliss and Isaac E. Gates, trustees; and thereupon your orator shows unto your honors that your orator, the Louisville & Nashville Railroad Company, and the said Kentucky Central Railroad Company are each corporations incorporated and organized by and under the laws of the Commonwealth of Kentucky, with power and authority to contract and be

contracted with and to sue and be sued, and are citizens of said Commonwealth; that said George S. Bliss is a citizen of the State of New York, and said Isaac E. Gates is a citizen of the State of New Jersey.

Your orator says that said Geo. S. Bliss and Isaac E. Gates, as trustees, on the 28th day of January, A. D. 1886, filed their bill of complaint in this honorable court against said Kentucky Central Railroad Company, wherein they, as trustees thereunder, set up and sought to have foreclosed a certain mortgage on the railroad, rolling stock, &c., of said Kentucky Central Railroad Company, therein described, alleged to have been executed and delivered by said
124 railroad company to said Bliss and Gates, as said trustees, to secure the payment of six thousand and six hundred of said company's bonds of one thousand dollars each, and to have said railroad and its rolling stock, &c., sold and the proceeds of said sale applied in satisfaction of six thousand and thirty-seven of said bonds.

No answer having been filed to said bill of complaint, your orator, by leave of court, on the — day of ——, A. D. 1886, filed in said suit its intervening bill, making complainants, George S. Bliss and Isaac E. Gates, as trustees, and defendant, said Kentucky Central Railroad Company, defendants thereto, therein setting up and relying on a certain written contract executed by and between your orator and said Kentucky Central Railroad Company on the 8th day of August, A. D. 1884, a copy of which contract was filed with and made part of said intervening bill as Exhibit "A," by and under which contract your orator claimed that said Kentucky Central Railroad Company was indebted to your orator in the sum of $78,932.25, $60,000 thereof for interest on one million dollars, one-half of the cost of the railroad from Livingston to Jellico, up to
125 December 1st, 1885, and that to secure the payment of said sum of $78,932 it had a lien on the rolling stock of the railroad of said Kentucky Central Railroad Co. therein described under the 8th section of the amended charter of said company, approved March 20th, 1871, superior to any lien of said trustees under their said mortgage.

A demurrer was filed to said intervening bill by said Bliss and Gates, trustees, and by said Kentucky Central Railroad Company, and said demurrers were by the court overruled, and no other pleadings having been filed in said suit by either of said parties.

Subsequently, to wit, on the 22d day of January, 1887, your orator filed in this court its supplemental intervening bill of complaint, setting up therein and asserting its claims under aforesaid contract to $60,000, the annual interest due on one million dollars, one-half the cost of the construction of the railroad from Livingston to Jellico aforesaid, from and including December, 1885, to and including the month of November, 1886, and one-half the costs of maintenance, repairs, and renewals on said road during that time, amounting to the sum of $15,421.93, and asserting a lien to secure said sums of money under the 8th section of the amended charter of the

Kentucky Central Railroad Company, approved March 20,
126 1871, which section was therein recited, and prayed for the enforcement of its lien against the rolling stock of said road and the proceeds of the sale thereof.

Answers were filed to said intervening bill and supplemental intervening bills by complainants, Bliss and Gates, and by the Kentucky Central Railroad Company, respectively; and thereafter, to wit, on the 23rd day of April, 1887, under the order and decree of this court in this action, said road and its rolling stock were sold at public sale to the highest and best bidder, the rolling stock bringing at said sale over two hundred and five thousand dollars, the purchase price for which was part cash, balance on secured notes or bonds, which cash, notes, or bonds are now in the hands of the receiver in this case, subject to the order of this court and to the liens aforesaid of this intervener.

Your orator says that both it and the said Kentucky Central Railroad Company are bound by the covenants and agreements contained in the written contract, copy of which is filed with and made part of its intervening bill herein, for the term of twenty-five years from and after the 1st day of September, 1884, and that your orator
127 has during all the time since September 1st, 1884, to the present time, in compliance with the terms of said contract, conceded and given said Kentucky Central Railroad Company equal traffic rights with itself in every respect over said line of railroad between Livingston aforesaid and Jellico aforesaid for all the traffic between all points on and beyond, with the privilege to the said Kentucky Central Railroad Company of running its own trains over said road under its own trainmen, at its own cost and expense, and in accordance with schedules satisfactory to itself, and it has during all that time been ready to concede and give to said Kentucky Central railroad trains equal rights with its own trains of the same class on and over said road, and has during that time performed and complied with all the covenants and agreements of said contract by it to be performed and — be complied with.

And your orator says that in consideration of the compliance by your orator of the covenants and agreements of the contract aforesaid and of the construction by it at its own costs of the said railroad between Livingston and Jellico aforesaid said Kentucky Central Railroad Company in and by said contract became bound
128 and promised to pay your orator, in addition to the sums set up in intervening and supplemental intervening bills, $30,000 as the interest on one million dollars, the one-half the cost of the construction, &c., of the road from Livingston to Jellico, from December 1, 1886, to June 1, 1887; and your orator says in consequence of the sale of said rolling stock as aforesaid before said first day of June it claims and is entitled out of the proceeds of the sale thereof to recover such proportion of the sum of $30,000 as the time from December 1, 1886, to April 23, 1887, bears to the time from said September 1 to June 1, 1887, which is $23,571.47, which sum is due and unpaid.

And in and by said contract said Kentucky Central Railroad Co. also became bound and promised to pay your orator monthly for and during each month from and including the month of December, 1886, to and including the month of March and up to the 23rd day of April, 1887, one-half of the cost of the maintenance, repairs, and renewals of said road between Livingston and Jellico aforesaid, not including the repairs and renewals of station buildings, platforms, and other buildings not required by said Kentucky Central Railroad Co.

In the exercise of the franchise conveyed said payment to
129 be made as soon after the close of each month as the accounts could be rendered, not later than the 25th of the succeeding month.

And your orator says it has paid for such maintenance, repairs, and renewals from and including the month of December, 1886, to and including the month of March and up to the 23rd day of April, 1887, $14,200.20 as follows, to wit:

For the month of December, A. D. 1886, the sum of $3,330.29; for the month of January, A. D. 1887, the sum of $2,388.66; for the month of February, A. D. 1887, the sum of $2,546.46; for the month of March, A. D. 1887, the sum of $2,552.05, and for the month of April up to the 23rd day thereof the sum of $3,382.74.

An itemized account of aforesaid costs and expenses of such maintenance, repairs, and renewals for each of said months, except for the month of April, was, on the — day of —— and before the 25th day of the succeeding month, duly rendered and presented by your orator to the Kentucky Central Railroad Company, and payment of one-half the amount thereof was then and there demanded, which payment was refused, and the one-half of each of said monthly accounts so owing and due by said Kentucky Central Railroad Company to your orator, amounting in all, the ½, to the sum of
130 $7,100.10, is wholly unpaid.

Said monthly itemized account- are filed herewith and made part hereof, marked Exhibit 1, "Exhibit 2," Exhibit 3, Exhibit 4, and Exhibit 5, respectively.

Your orator says by and under the 8th section of an act amendatory to the charter of said Kentucky Central Railroad Company, approved March 20, 1871, which section is in these words, to wit:

"That to the extent of all claims of persons for injuries to stock or person or for material furnished to said company or for breach of contract the claimant shall have a lien upon the rolling stock of said company, any mortgage to the contrary notwithstanding"—

It had a lien on the rolling stock of said Kentucky Central Railroad Company used on or in connection with its railroad, extending from Covington, in Kenton county, Kentucky, to Livingston, Rockcastle county, in the same State, it being the same and all the rolling stock embraced in the aforesaid mortgage from said company to Bliss & Gates, trustees until the sale of said stock under the decree of this court herein as aforesaid, and now has a lien on the proceeds of the sale of said stock as aforesaid for the security of
131 its aforesaid debt, and *and* said lien is prior and superior to

the lien of said trustees and *cestui que trust* under said mortgage, and said lien existed as a lien prior and superior to all others on said rolling stock up to the time of the sale thereof as aforesaid, and now exists on the proceeds of the sale thereof to secure the payment of the debts and claims set up by your orator against said Kentucky Central Railroad Company in its original and supplemental intervening bills.

And your orator says that the extension of the railroad of the Kentucky Central Railroad Company from Lexington, Kentucky, to Livingston aforesaid was authorized to be and was constructed by it, and the money therefore raised and the aforesaid mortgage and the bonds it was given to secure were executed, delivered, and accepted under and by virtue alone of the aforesaid amended charter of said railroad company, approved March 20th, 1871, as aforesaid, and said amendment was procured to be enacted and was accepted by said company, and is in full force and effect.

This intervener says that the date and time of execution of the contract between it and Kentucky Central railroad, filed with
132 and set up and relied on in its intervening bill herein, is there incorrectly stated to be the 9th day of May, 1884, and in its supplemental intervening bill is stated to be the 9th day of August, 1884, whereas the true date and time of execution of said contract was and is August 8th, 1884, and it asks that said erroneous date may be corrected.

Wherefore your orator prays that this may be taken as its second supplemental intervening bill herein; that said Kentucky Central Railroad Company be adjudged to be indebted to your orator, besides the sum set out in the original and supplemental intervening bills, the following sums, to wit: $23,571.47 and $7,100.10, as hereinbefore stated, with interest thereon from the maturity of said debts; that it be adjudged a lien to secure the payment of said debts on the aforesaid rolling stock of said company and on the proceeds of the sale thereof superior to any lien secured by aforesaid mortgage; that it also have a lien superior to said mortgage lien on the value of the use of said rolling stock while it is in the hands of and operated by the receiver, and out of the proceeds of the sale
133 of said rolling stock and the money obtained by the receiver for the use of the same while in his hands this intervener's debt aforesaid, with interest, may be satisfied, and that it have such other and further relief in the premises as to your honors will seem meet.

May it please your honors to grant *under* your orator a writ of subpœna, to be directed to the said Kentucky Central Railroad Company and said George S. Bliss and said Isaac E. Gates, trustees, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court, and then and there full, true, and perfect answer make, but not under oath, to all and singular the premises.

BARNETT, NOBLE & BARNETT,
Solicitors for Lou. & Nash. R. R. Co.

And on a day following, to wit, on the 2d day of June, the answer of the complainants to the second amended intervening bill of the Louisville & Nashville Company and amended answer to the original intervening bill and first amended bill of said company was filed herein. Said answer is in words and figures as follows, viz.:

134 Circuit Court of the United States, District of Kentucky.

GEORGE S. BLISS *et al.*, Complainants,
vs.
THE KENTUCKY CENTRAL RAILROAD COMPANY *et al.*, Defendants. } No. —.

Answer of the complainants to the second amended intervening bill of the Louisville & Nashville Railroad Company and amended answer to the original intervening bill and the first amended bill of said Louisville and Nashville Co.

Now comes the complainants, for answer to the second intervening bill or petition of the Louisville & Nashville Railroad Company and for amended answer to the first amended intervening bill and the original intervening bill or petition of said company, and say that they deny that the contract set forth in said several intervening petitions was made by the Kentucky Central Railroad Company; and they deny that it was a valid agreement under the laws of Kentucky, if made; (they deny that said Louisville and Nashville Company kept the
135 said agreement, but aver that they violated it by increasing the rates and charges for the transportation of freights from Milldale, in Kenton county, Kentucky, to Cincinnati to such an extent that it was impossible for said Kentucky Central Railroad Company to transport freights between Jellico and Livingston, and that said increase in rates was made for the purpose of preventing said Kentucky Central Railroad Company from so transporting merchandise or other property between said points).

Complainants further say that they deny that said agreement, if made and if valid and if violated, would give the said Louisville and Nashville Company any lien upon the rolling stock of said Kentucky Central Railroad Company, and they deny the alleged existence of any such lien, and aver that the lien of the complainants, as set forth in their bill, is superior to any and all other liens upon any of said property except that of Edward Pardee; wherefore complainants pray that said intervening petitions may be dismissed.

And on the same —, to wit, on the 2nd day of June, A. D.
136 1887, the answer of the defendant to the second amended bill of the Louisville & Nashville Railroad Company was filed herein, which said answer is in words *is in words* and figures as follows:

Answer of Ky. Central R. R. Co.

U. S. Circuit Court, Dist. of Kentucky.

BLISS & GATES *vs.* KENTUCKY CENTRAL R. R. Co. *et al.*

The Kentucky Central Railroad Co., for answer to the second amended intervening petition filed herein by the Louisville & Nashville R. R. Co. on May 12, 1887, repeats each denial and each allegation of its answer to the original and first amended bill of said Louisville and Nashville R. R. Co. and applies same to said second amended bill as fully as — said denials and allegations were fully written herein, and def't prays to be here dismissed with its costs.

THOS. W. BULLITT,
For Ky. Central R'y Co.

And on the same day, to wit, on the 2d day of June, A. D.
137 1887, the Louisville and Nashville Railroad Company filed herein its replication to the foregoing answers, as follows, viz:

Replication.

Circuit Court of the United States for the District of Kentucky.

GEORGE S. BLISS *et al.*, Complainants,

vs.

KENTUCKY CENTRAL RAILROAD COMPANY, Defendant.

The replication of the Louisville and Nashville Railroad Company, intervening petitioner, to the answer of complainants, George S. Bliss *et al.*, to the second amended intervening petition of said Louisville & Nashville Railroad Company.

This repliant, for replication to said answer, saith that it will aver and approve its said second amended intervening bill to be true, certain, and sufficient in law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is
138 true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its second amended intervening petition it hath already prayed.

BARNETT, NOBLE & BARNETT,
Counsel for L. & N. R. R. Co.

Replication.

Circuit Court of the United States for the District of Kentucky.

GEORGE S. BLISS *et al.*, Complainants,

vs.

KENTUCKY CENTRAL RAILROAD COMPANY, Defendant.

The replication of the Louisville & Nashville Railroad Company, intervening petitioner, to the answer of defendant, Kentucky Central Railroad Company, to the second amended intervening petition of said Louisville & Nashville Railroad Company.

This repliant, for replication to said answer, saith that it will aver and *ap*prove its said second amended intervening bill to be true, certain, and sufficient in law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto
139 by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its second amended intervening petition it hath already prayed.

BARNETT, NOBLE & BARNETT.

And on a day following, to wit, on the 10th day of June, A. D. 1887, the following order was entered herein, viz:

GEO. S. BLISS and ISAAC E. GATES, Trustees,

vs.

THE KENTUCKY CENTRAL R. R. COMPANY.

This action came on to be heard at this term, as to the debts set up and lien asserted by the intervener, The Louisville and Nashville Railroad Company, in its three intervening bills against the complainants, Bliss and Gates, trustees, and the defendant, The Kentucky Central Railroad Company, and was argued by counsel for the respective parties; and thereupon, upon due consideration thereof, the court being fully advised in the premises, finds that the eighth section of the amended charter of the Kentucky Cen-
140 tral Railroad Company, approved March 20, 1871, does not embrace and create a lien in favor of the claims of the said The Louisville and Nashville Railroad Company, asserted in said several intervening petitions, and that said intervening petitioner has, therefore, no lien upon the property of the said Kentucky Central Railroad Company or any part thereof to secure the payment of said alleged indebtedness, and that the equity of the cause is therefore with the complainants and with the Kentucky Central Railroad Company.

It is therefore considered, adjudged, and decreed that the said intervening petitions of the said The Louisville and Nashville Railroad Company be, and the same are hereby, dismissed at the costs of said Louisville and Nashville Railroad Company.

Nothing herein contained shall be construed to prevent the said Louisville and Nashville Railroad Company from prosecuting its action at law for the recovery of the said several sums set forth in its said intervening petitions; and it is hereby found and certified that said several claims are in excess of the sum of five thousand ($5,000.00) dollars, exclusive of interest and costs.

The said The Louisville and Nashville Railroad Company excepts to said finding and decree and prays an appeal to the Supreme Court of the United States, which is granted, and it is permitted to execute an appeal bond in the sum of one thousand ($1,000) dollars.

141 And on June 14th, A. D. 1887, the following bond was filed herein, viz:

Circuit Court of the United States, District of Kentucky.

BLISS & GATES, Trustees,

vs.

THE KENTUCKY CENTRAL RAILROAD CO.

Know all men by these presents that we, The Louisville & Nashville Railroad Company, principal, and John A. Carter, surety, are held and firmly bound unto The Kentucky Central Railroad Company and the complainants in the sum of one thousand dollars, to be paid to the said Kentucky Central Railroad Company and the complainants, — executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and admintrators, firmly by these presents.

Sealed with our seals and dated this eleventh day of June, A. D. 1887.

Whereas the above-named Louisville and Nashville Railroad Company, intervener, hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Covington, against it so far as it adjudges and decrees that the intervener is not entitled to a lien to secure its debts in its intervening petitions set out:

142 Now, therefore, the condition of this obligation is such that if the above-named Louisville and Nashville Railroad Company shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN A. CARTER. [L. S.]

Extine Norton, to be read as evidence in said intervening petitioner's behalf on the trial of the above-entitled suit, and shall adjourn from day to day, if necessary, until completed.

BARNETT, NOBLE & BARNETT,
For L. & N. R. R. Co.

146 THOMAS W. BULLITT,
For K'y Central R'y Co.

Circuit Court of the United States for the District of Kentucky.

BLISS & GATES *vs.* THE KENTUCKY — RAILROAD CO.

STATE OF NEW YORK,
Southern District of New York,
City and County of New York:

ECKSTEIN NORTON, a witness called on behalf of the Louisville and Nashville Railroad Company, the intervening petitioner herein, and residing in Richmond county, in the State of New York, more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth and being carefully examined by JOHN L. CADWALADER, Esquire, of counsel for the said intervening petitioner, did depose and say as follows:

Q. Please state your occupation and position in the years 1884 and 1885.

147 A. I was vice-president of the Louisville and Nashville Railroad Company. I became connected with the company as vice-president about the month of October, 1884, and so continued until the autum- of 1886, when I was elected president, which place I now hold.

Q. I call your attention to the contract between the Kentucky Central Railroad Company and the Louisville and Nashville Railroad Company, bearing date on or about August 8th, 1884, for the joint use of a portion of the road of the Louisville and Nashville Company between Livingston and Jellico and ask whether any sum was paid to you in the autumn of 1884 under this contract; and, if so, the details concerning the payment, the manner of payment, and the date on which said payment was made?

A. Under date of December 1st, 1884, a letter was addressed to C. P. Huntington, Esquire, president of the Kentucky Central Railroad Company, a copy of which is annexed, marked "Exhibit No. 1, A. W. A., of this date," requesting the payment of fifteen thousand dollars, due December 1st, for the three months which had then transpired, as provided by said contract, and on the 4th of December Mr. Huntington sent to this office a check for fifteen thou-

148 sand dollars in payment of the quarterly payment due December 1st. That check was endorsed in the usual way, passed through our bank account, was collected, and placed to the credit of the company.

Q. After this payment was any further amount paid to you or any further demand made by you for further rent?

A. When the next payment came due, as I remember, on the first of March and some little time after that date, a request for payment in some form was made to Mr. Huntington; I cannot say whether it was by letter or messenger, but the amount was not received.

Q. What next took place on this subject?

A. The amount due not having been paid, on or about the 11th of April I called on Mr. Huntington in person, at his office, in the Mills building, in this city. I had already received a copy of a letter of Mr. M. H. Smith, the then president of the Louisville and Nashville road, addressed to Mr. Huntington, on that subject, and at this time I had quite a conversation with him in regard to the agreement and lease for the joint use of the Knoxville Branch, being the agreement to which reference has been made. Mr. Hunting-
149 ton at that time informed me that he had received a letter from Mr. M. H. Smith, a copy of which letter I had also received and had read. Mr. Huntington said that he did not see how the Kentucky Central railroad could pay the money agreed to be paid by this lease, as their business from that line amounted to little or nothing, and he named some very small amount of business—a few cars per day.

He said that if the Kentucky Central had the money he would favor their continuing the lease and standing by their contract, but that they did not have the means, and that he was unwilling to advance the money for that purpose. He also said that the Kentucky Central had an arrangement with the East Tennessee, Virginia and Georgia railroad by which that company was obliged to pay some portion of this sum, and that the East Tennessee, Virginia and Georgia Railroad Company did not wish to appear in the contract, and for that reason the contract was made with the Kentucky Central alone. He referred in that connection to some amount which was due the Kentucky Central by the East Tennessee, Virginia and Georgia, and which he said they could not collect, as the re-
150 ceiver stated that he had no authority to adjust a matter of that kind.

Q. Have you given the substance of the conversation between Mr. Huntington and yourself on this subject?

A. Yes; the conversation was somewhat long, but I think I have given the substance of the conversation on this point. At some time Mr. Huntington made some general statements about the business which they did not receive, but I am inclined to think that no conversation on this point took place at this interview. If any such did I cannot remember it.

Q. Were any further demands made after this time for the payment of these quarterly sums?

A. Under date of the 29th of May I, as vice-president, wrote to Mr. Huntington a letter, a copy of which is annexed and which is marked "Exhibit No. 2 of this date, A. W. A.," by which I requested the payment of the fifteen thousand dollars due on the 1st of March and the fifteen thousand dollars which would fall due on the first day of June. This amount was not paid, and on the 10th day of December following I again addressed Mr. Huntington a letter,

copy of which is hereto annexed, marked "Exhibit No. 3, A.
151 W. A.," by which I requested the payment of the fifteen thousand dollars due on the 1st of March and the fifteen thousand dollars which would fall due on the first day of June. This amount was not paid, and on the 10th of December following I again addressed Mr. Huntington a letter, a copy of which is hereto annexed, marked "Exhibit No. 3, A. W. A., of this date," in which I requested the payment of the amount of thirty thousand dollars already due and of the further amounts up to and including December first, 1885, aggregating in all at that time sixty thousand dollars, and these amounts have not been paid.

EX. NORTON.

Subscribed and sworn before me this 4th day of May, A. D. 1887.

A. M. ANDREWS,
Notary Public (21), *N. Y. City & Co.*

New York Office, 50 & 52 Exchange Place, rooms 23, 24, 25, & 26.

Ex. Norton, vice-president.

NEW YORK, *December 1st*, 1884.

C. P. Huntington, Esqr., pres't Ky. Central R. R. Co., 23 Broad St., city:

152 DEAR SIR: Our Louisville office has requested us to collect the quarterly payment due to-day ($15,000) under the agreement with your Co. dated Aug. 8th, 1884.

Will you, therefore, kindly send check for the amount to order of this Co., and oblige,

Yours truly,

(Sig.) S. H. EDGAR,
Manager, &c.

Exhibit No 1, May 4th, '87, A. W. A.

Copy.

Louisville & Nashville Railroad Co., New York office, 50 & 52 Exchange Place, rooms 23, 24, 25, & 26.

Ex. Norton, vice-president.

MAY 29, 1885.

C. P. Huntington, Esq., pres't Kentucky Cent. R. R. Co., 23 Broad St.

DEAR SIR: Our Louisville office has requested us to notify you to send cheque to this office for the rent past due, $15,000, and the rent due 1st prox., $15,000, under agreement with your Co.
153 dated August 8th, 1884. Will you, therefore, kindly send cheque on Monday next for $30,000 to order of this Co., and oblige,

Yours truly,

(Sig.) EX. NORTON, *Viee-Pres't.*

Exhibit No. 2, May 4, '87, A. W. A.

(Copy.)

Louisville & Nashville Railroad Co., New York office, 50 & 52 Exchange Place, rooms 23, 24, 25, & 26.

Ex. Norton, vice-president.

DECEMBER 10, 1885.

C. P. Huntington, Esq., pres't Ky. Cent. R. R.

DEAR SIR: The rent of the Knoxville Branch of the railroad of this Co., leased to you, due June 30, 1885, $30,000, for which demand has already been made, and the rent of same branch due Dec. 1st, 1885, $30,000, are both still unpaid, and we have to request the immediate payment of said rent, which is already overdue a much longer time than is excusable, & we trust that no further demand will be necessary and that you will promptly enclose your cheque for the amount due, $60,000.

Yours truly,

(Sig.) EX. NORTON, *Vice-P't.*

Exhibit No. 4, May 4, '87, A. W. A.

154 Circuit Court of the United States for the District of Kentucky.

BLISS & GATES *vs.* KENTUCKY CENTRAL RAILROAD COMPANY.

STATE OF NEW YORK,
Southern District of New York,
City and County of New York, } *ss:*

I hereby certify that on the 4th day of May, A. D. 1887, before me, Arthur W. Andrews, a notary public duly appointed for and residing in the city and county of New York, in the State of New York, personally appeared, pursuant to the notice hereto annexed, between the hours of 10 o'clock a. m. and 5 o'clock p. m., the witness named in said notice, and John L. Cadwalader, Esquire, appeared as counsel for the Louisville and Nashville Railroad Company, the intervening petitioner in the above-entitled cause, and the said Eckstein Norton, being by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as appears by the depositions hereto annexed.

155 And I hereby further certify that the said deposition was then and there taken in my presence by a stenographer, and was, after it was reduced to type-writing, read over to said witness in my presence and subscribed by him, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of this court, as required by law.

And I further certify that the reason why the said deposition was taken was that the said witness resides in Richmond county, in the State of New York, more than one hundred miles from the city of Covington, in the State of Kentucky, the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the same.

And I further certify that the fee for taking said deposition, $10.00, has been paid to me by the intervening petitioner, and the same is just and reasonable.

In testimony whereof I have hereunto set my hand and notorial seal, at the city of New York, in the county of New York and State of New York, the 4th day of May, A. D. 1887.

[SEAL.] A. W. ANDREWS,
Notary Public (21), *N. Y. C. & Co.*

156 STATE OF NEW YORK, }
City and County of New York, } *ss.:*

I, James A. Flack, clerk of the city and county of New York, also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that A. W. Andrews, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of such notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 7 day of May, 1887.

[SEAL.] JAMES A. FLACK, *Clerk.*

And on the same day, to wit, the 13th day of May, 1887, certain depositions on behalf of the Louvisville & Nashville Company file herein, which said depositions are in words and figures as follows:

157 *Notice.*

Circuit Court of the United States for the District of Kentucky.

BLISS & GATES, Plaintiffs,
vs.
KENTUCKY CENTRAL RAILROAD COMPANY, Defendants.

The defendant, The Kentucky Central Railroad Company, and Thomas W. Bullitt, its counsel; the plaintiffs, Bliss and Gates, and Ramsey, Maxwell, and Mathews, its counsel, and Thomas W. Bullitt, acting for them at their request, and Edward Pardee, trustee, and Robert Ramsey, his counsel:

You are hereby notified that intervening petitioner, The Louisville & Nashville Railroad Company, will attend at the office of the Louisville & Nashville Railroad Co., on the northeast corner of Second & Main streets, Louisville, Kentucky, on Thursday, April 28, 1887, at 10 o'clock a. m. thereof, to take the deposition of H. M. Smith, A. M. Quarrier, Cushman Quarrier, Littleton Cook, and others, and at county clerk's office of Madison county, at Richmond,

Kentucky, at 10 o'clock a. m., on Saturday, April 30, 1887, to take the deposition of the clerk of said court and a former judge, to be read as evidence in said intervening petitioner's behalf on the trial of the above-entitled suit, and shall adjourn from day to day, if necessary, until completed.

158 BARNETT, NOBLE & BARNETT,
For L. & N. R. R. Co.

Notice accepted for compl. and Pardee.

RAMSEY, M. & M.,
ROBERT RAMSEY.

The deposition of Thomas Thorpe, taken on the 30th day of April, 1887, at the county court, clerk's office of Madison Co., State of Kentucky, in Richmond, Kentucky, on the notice hereto attached, to be read as evidence on behalf of the Louisville and Nashville Railroad Company in the action of Bliss & Gates against The Kentucky Central Railroad Company, pending in the circuit court of the United States for the district of Kentucky.

The witness, being first duly sworn, deposes and says:

Examined by TYLER BARNETT, counsel for Louisville & Nashville Railroad Company:

Q. What is your name, residence, and occupation?

A. My name is Thos. Thorpe; am clerk of the Madison county court, and reside in Richmond, Ky.

Q. How long have you been clerk of the Madison county court?

A. Since the 14th day of August, 1882.

159 Q. Who is the custodian of the records of the Madison county court?

A. I am.

Q. I show you a record and ask you if you have seen it heretofore; if so, state what it is.

A. I have seen it; it is a copy of the proceedings had in the Madison county court with regard to the Kentucky Central Railroad Company, the subscription made by the county to the said company, and the issuing of the bonds, paying of the subscription and receipt for same; also agreement with the county court made by said company.

Q. 5. Who made the said record, and does it correctly or incorrectly show the proceedings had in said county court in reference to said subscription?

A. 5. I made the record, and it correctly shows the proceedings of said court in reference to said subscription.

Q. 6. Does it or not embrace all the papers filed in and orders entered in the matter of subscription of Madison county to the Kentucky Central Railroad Company?

A. 6. It does.

Q. 7. Will you file said record with your deposition and make it a part thereof?

A. 7. Yes, sir; I file it and make it a part of my deposition, marked "Exhibit A."

160 Q. 8. Where do the lines of the Kentucky Central Railroad Company run?

A. 8. From Covington, Ky., through Cynthiana and Paris to Lexington, in Kentucky, and from Paris through Winchester and Richmond to Lexington, in Kentucky, and from Maysville through Carlisle and Millersburg and Paris to Lexington, in Kentucky.

Q. 9. What are the terminal points of the Kentucky Central railroad?

A. 9. Covington and Lexington, in Kentucky.

THOS. THORPE.

STATE OF KENTUCKY, *Madison County,* } ss:

I, H. J. F. Turner, an examiner in and for the county and State aforesaid, do certify that the foregoing deposition of Thomas Thorpe was taken by me at the time and place mentioned in the caption and notice hereto attached; that said witness was duly sworn before giving it; that it was written by me in his presence, read to him by me, and subscribed to by him in my presence. Tyler Barnett, counsel for Louisville and Nashville Railroad Company, was present.

Given under my hand this 30th day of April, 1887.

Att.: H. F. TURNER,
Examiner for Madison County.

Cost (paid by Barnett for L. & N. Co.):

161 Examiner, for taking deposition.. $2 00
Postage..... 15

$2 15

Att: H. F. TURNER, *Examiner.*

This exhibit marked A, was filed with the deposition of Thos. Thorpe, taken by me on 30th April, 1887.

H. F. TURNER,
Examiner for Madison Co.

A.

STATE OF KENTUCKY:

Madison County Court. May Term.

MAY 30TH, 1881.

At a county court held for Madison county May 31st, 1881.

Present: Hon. W.E. Miller, judge.

The Kentucky Central Railroad Company, by its president, M. E. Ingalls, this day produced and presented in open court the petition of said railroad company to said court, which reads as follows:

"To the county judge of Madison county, State of Kentucky:

Your petitioner, The Kentucky Central Railroad Company, through its president, M. E. Ingalls, proposes to extend or construct its rail-

road on a broad or standard gauge of four feet eight and one-half inches from Paris, in the county of Bourbon, or from Lexing-
162 ton, in the county of Fayette, to Richmond, in the county of Madison, and thence to the southeastern boundary line of the State of Kentucky or some intermediate point, in consideration of Madison county subscribing stock in the Kentucky Central Railroad Company to the amount of two hundred thousand dollars, as follows:

One third of the whole amount of stock shall be subscribed and paid for by said county on the 1st day of October, 1882, provided the said company shall by that time extend and complete its railroad on a broad or standard gauge and have cars running either from Paris or Lexington into the corporate limits of Richmond, Kentucky, or as soon thereafter as the railroad shall be so extended.

Another third of the whole amount of stock shall be subscribed and paid for by said county on the 1st day of October, 1883, provided the proceeding condition as to the competition of the railroad to Richmond has been complied with, and the remaining third of said amount of stock shall be subscribed and paid for by Madison county when the company shall complete its railroad and
163 have cars running on same to the southern or eastern border of Madison county, next to the county of Jackson or Rockcastle, and the company shall issue certificates of stock to the county of Madison as the subscriptions are made and paid by said county.

The subscription of stock herein provided for shall be void if the railroad company fails to extend and complete its road to Richmond, in Madison county, by the 1st day of July, 1883, and the provision for the subscription of stock when the railroad is completed to the southern or eastern border of Madison Co. shall be void if the company fails to complete its railroad to the border of said county by the 1st day of July, 1884.

The Kentucky Central Railroad Company agrees to buy the stock herein referred to from Madison county and pay for same at the time the subscriptions are made and paid a price not less than thirty-seven and one-half cents on each dollar, but the county shall not be compelled to accept this price.

Wherefore the Kentucky Central Railroad Company respectfully petitions the honorable judge of Madison county to designate
164 a day and cause a vote to be taken by the qualified voters of Madison county in the manner prescribed by law, and especially by An act to amend an act entitled An act to incorporate the Kentucky Central Railroad Company, approved March 20th, 1871, and if, as the result of the election, the proposition is ratified in the manner provided by law, then it shall become a contract binding on the said company and the said county.

May 27, 1881.

M. E. INGALLS.

It is therefore ordered, in pursuance of the acts of the General Assembly of the Commonwealth of Kentucky incorporating said company and the act amendatory thereto authorizing an extension

of said railroad, and especially the Act to amend an act entitled An act to incorporate "the Kentucky Central Railroad Company," approved March 20th, 1871—

That the several officers hereinafter appointed to conduct the election, who shall perform the duties and have all the powers that are confer-ed by law upon officers conducting county elections, shall cause to be opened a poll at the several voting places in Madison county on Saturday, the 25th day of June, 1881, for the
165 purpose of taking the sense of the qualified voters of the county on the question of subscribing for and on behalf of said county stock to the amount of ($200,000) two hundred thousand dollars in the Kentucky Central Railroad Company upon the following terms and conditions, viz:

One-third of the whole amount of stock shall be subscribed and paid for by said county on the 1st day of October, 1882, provided the said company shall by that time extend and complete its railroad on a broad or standard gauge of four feet eight and one-half inches and have cars running either from Lexington, Ky., or Paris, Ky., into the corporate limits of Richmond, Kentucky, or as soon thereafter as the railroad shall be so extended and the cars running to Richmond, Kentucky.

Another third of the amount of stock shall be subscribed and paid for by said county on the 1st day of October, 1883, provided the preceeding condition as to the completion of the said railroad to Richmond has been complied with, and the remaining third of said amount of stock shall be subscribed and paid for by Madison
166 county when the said company shall build and complete its railroad and have cars running on same to the southern or eastern border of Madison county, next to the county of Jackson or Rockcastle, provided the road be so built and completed and the cars running on same by the first day of July, 1884.

And the company shall issue certificates of stock to the county of Madison as the subscriptions are made and paid by said county, for the amounts so paid, in shares of $100 each.

The subscription of stock herein provided for shall be void if the railroad company fails to extend and complete its road to Richmond, in Madison county, by the first day of July, 1883, and the provisions for the subscription of stock when the railroad is completed to the southern or eastern border of Madison county shall be void if the company fails to complete its railroad to the border of said county by the first of July, 1884.

The Kentucky Central Railroad Company agrees to buy the stock herein referred to from Madison county and pay for same at
167 the time the subscriptions are made and paid, or at the time said certificate- of stock are issued to the county by said company, at a price not less than (37½) thirty-seven and one-half cents on each dollar, but the county shall not be compelled to accept this price, and when the road is extended, as herein provided for, the said Kentucky Central Railroad Company or its assigns shall operate it generally as *as* other portions of said road are operated.

The clerk of this court shall provide a book for each voting place

and precinct in the said county, with a caption expressing the purpose for which the vote is taken, and in separate columns ruled and headed "For the subscription" and "Against the subscription," and the votes cast shall be recorded accordingly under said heads as they are cast.

It is further ordered that the time and place of taking the vote herein provided for shall be published by printed advertisements specifying for what purpose the vote is to be taken, posted up by the sheriff at the respective voting places in each precinct in the county and at three other public places in each precinct of the county three weeks immediately — the day of such election. The

168 county judge of Madison county shall examine and compare the polls of the votes taken in said county and declare and certify the result of said election, which, if in favor of the proposition submitted, shall be recorded in the county clerk's office of the county, and it shall be the duty of the county judge, if not legally prevented, at the second succeeding term of his court to have entered upon the order book of said county court the vote and the fact that the said election has been fairly held and has not been contested, and that the county of Madison is bound by same, and such entry shall constitute the obligations of Madison county.

In order to raise the amount of money to be realized under and by virtue of this order, if the vote is in favor of the proposition, the county court of Madison county shall levy upon all the property of said county subject to State revenue ad valorem taxes sufficient to pay the various sums agreed to be paid as they become due, allowing for the usual delinquencies in collection and for commissions to officers collecting same.

169 And the said county court shall cause the collection to be made by the same officers, under proper bond and securities, with the same power and authority granted and under the same liabilities imposed by law as other taxes are collected.

And when said sums are collected as aforesaid the same shall be paid to the Kentucky Central Railroad Company by the officers collecting the same.

And the county court, by virtue of a ratification of this order, by the vote of the people, and acts of the Legislature under which this election is held, is hereby fully empowered to do all other things necessary to carry out the contract made under this order.

It is further ordered that if the county, from the sale of stock in any corporation or bonds or from any other source, shall have a surplus of money, then the county court may apply the same to the payment of the indebtedness herein incurred or any part thereof, and the county court shall have the power to provide for the payment of the amount subscribed under this order by the issue of county bonds or in any other way which may be provided by law.

170 It is further ordered that the following persons be appointed to conduct and hold the election provided for in this order, the sheriff of the county being present in court and acting as required by law in the appointment of sheriffs of election with the county judge, and it shall be the duty of said officers to make their

returns as required by law in other elections. Said officers are as follows, viz:

Richmond district, No. 1.—Wm. Willis, G. B. Surley, judges; Bland Ballard, clerk; Joe Detherage, sheriff.

Foxtown dist., No. 2.—Overton Bigeistaff, A. Gum, judges; Wm. Bennett, clerk; Presley Batterton, sheriff.

Union dist., No. 3.—J. W. Scudder, James S. Golden, judges; W. C. Talbott, clerk; Jas. W. Oldham, sheriff.

Elliston dist., No. 4.—W. K. Norris, Amammal Fritz, judges; Smith Grimstead, clerk; Wm. M. Thomas, sheriff.

Yates dist., No. 5.—B. S. Powell, James F. Todd, judges; Geor. W. Parke, clerk; John W. McPherson, sheriff.

Glade dist., No. 6.—John W. Gabbard, Wm. M. Adams,
171 judges; James W. Van Winkle, clerk; Geo. D. White, sheriff.

Kirksville dist., No. 7.—John Hill, Wm. Byrum, judges; Robert Burton, clerk; W. R. Cornelison, sheriff.

Poosey dist., No. 8.—W. H. Ferrill, Jas. W. Long, judges; Geo. Whittaker, clerk; Alex. Ray, sheriff.

Million dist., No. 9.—Woodson B. Newly, Eldridge Harvey, judges; Wm. Taylor, clerk; Leroy Haden, sheriff.

It is further ordered that this order be published in the Richmond Herald and Kentucky Register until day of election, and that said order be printed in handbill to the number of 500 copies for circulation and to be posted in each of the voting precincts of the county, as herein provided.

STATE OF KENTUCKY:

Madison County Court of Claims and Levy. Called Term.

THURSDAY, *April 5th*, 1883.

Present: Hon. W. C. Miller, P. J., and the following associate judges, viz: D. P. Armes, William Willis, O. Biggerstaff, G. B. Million, W. J. Scudder, Jno. S. Griggs, B. G. Bowell, Jas. F. Todd, W.
H. Ferrill, Bryant Holman, I. N. Douglass, W. K. Norris,
172 J. H. Galebard, S. J. Coyle, Jos. M. Smith.

The following order was presented to the court by S. J. Scott, county attorney, and unanimously adopted, viz:

"It appearing to the court that, in pursuance of an order of this court made on the 31st day of May, 1881, polls were opened and an election held at the several voting places in Madison county in the manner prescribed by law on the 25th day of June, 1881, to take the sense of the qualified voters of Madison county on the question of subscribing for and on behalf of said county stock to the amount of ($200,000) two hundred thousand dollars in the Kentucky Central Railroad Company on the terms and conditions set forth in said order of this court, and the county judge of Madison county, in accordance with the law and in pursuance of the requirements of the order of this court, having examined and compared the polls of the vote taken in said county at said election and declared and certified that the result of said election was in favor of the propositions sub-

mitted and the said election was fairly held and has not been contested, and that the county of Madison is bound by same, and having counted and certified the vote as follows:

173 STATE OF KENTUCKY:

Madison County Court. June Term.

JUNE 28, 1881.

W. C. Miller, judge of the Madison county court, and J. B. Willis, sheriff of Madison county, having duly certified to this court the vote cast in Madison county on the 25th day of June, 1881, on a proposition to subscribe for and on behalf of said county stock to the amount of ($200,000) two hundred thousand dollars in the Kentucky Central Railroad Company on the terms and conditions set forth in an order made by this court May 31, 1881, and it appearing from said certificate that there was a majority of 745 votes cast in favor of said proposition and subscription of stock, it is therefore ordered that the said certificate of the result of said election be spread upon the records of this court immediately following this order.

STATE OF KENTUCKY, *Madison County,* } *sct:*

We, W. C. Miller, judge of the Madison county court, and J. B. Willis, sheriff of said county, duly authorized to examine and compare the polls of the vote taken in Madison county at an election duly held at the various voting places of said county on the
174 25th of June, 1881, for and against proposition to subscribe for and on behalf of Madison county stocks to the amount of ($200,000) two hundred thousand dollars in the Kentucky Central Railroad Company on the terms and conditions set forth in an order made by the judge of the Madison county court, dated May 31, 1881, and duly submitted, do declare and certify that the result of said election is in favor of said proposition and that the vote is as follows:

For subscription	1,760	votes.
Against the subscription	1,015	"
Majority in favor of subscription	745	"

W. C. MILLER
Judge M. C. C.
J. B. WILES,
Sheriff M. C.

It appearing, also, that the Kentucky Central Railroad Company has accepted of the proposition submitted as aforesaid & is in good faith extending and building its railroad to Richmond, in Madison county, and on to the southern border of said county next to the

county of Rockcastle, it is therefore ordered by this court that said election be, and the same is hereby, declared legal and valid and the county of Madison is bound by the same, and the county judge of Madison county is humbly authorized and directed for and
175 on behalf of the county of Madison to subscribe and take stock in the Kentucky Central Railroad Company to the amount of two hundred thousand dollars at the time and in the installments in accordance with the law and former orders of this court, which stock *stock* shall be entitled to all dividends declared on the stocks by the said company, and certificates of stocks shall be issued to Madison county for the amount of stocks so subscribed. It is further ordered that, to raise the money necessary to pay for the stocks herein authorized to be subscribed, bonds of Madison county shall be *prepaid*, with interest attached, to an amount not exceeding two hundred thousand dollars, of denominations not less than five hundred dollars nor more than one thousand dollars, payable to bearer, at Madison Nat'l Bank of Richmond, Ky., fifteen years from this date, but redeemable at the pleasure of the county court after five years from this date, bearing interest at the rate of six per cent. per annum, which shall be paid annually, when due, on presentation of the coupons at the Madison National Bank of Richmond, Ky.

W. C. Miller, county judge, S. J. Scott, county attorney,
176 and Thomas Thorpe, clerk of this court, are hereby authorized and empowered to contract for and procure the printing of the bonds herein provided for, with coupons attached thereto, in such form and manner as they think proper, not inconsistent with the law and order of this court. The bonds shall not be signed by the county judge or county clerk nor issued until further orders of this court, and nothing herein contained shall bind this court to pay the subscription of the county to said railroad company in anywise except under the contract embodied in the order adopted by the people at the election aforesaid, nor release the railroad Co. from the completion of the road within the timie subscribed in said order.

W. C. MILLER.

STATE OF KENTUCKY:

Madison County Court of Claims & Levy. May Term.

MAY 30TH, 1883.

It is ordered that to raise the money necessary to pay for the stock heretofore authorized to be subscribed by the county judge of Madison county to the capital stock of the Kentucky Central Railroad Company bonds of Madison county shall be issued, signed by the county judge and attested by the county clerk, with coupons attached, also signed by the county judge and attested by the county
177 clerk, and the said bonds so issued shall not exceed according to their face value the sum of eighty-three thousand and five hundred dollars, and shall be of denomination of not less than five hundred dollars nor more than one thousand dollars, regularly numbered from one upward, payable to bearer, at the Madison National Bank of Richmond, Kentucky, fifteen years from this date,

but redeemable at the pleasure of the county court after five years from this date, bearing interest at the rate of six per cent. per annum, which shall be paid annually, when due, on presentation of the coupons at the Madison National Bank of Richmond, Kentucky, and the faith of Madison county is hereby pledged to the payment of said bonds and the interest *according* thereon.

2d. It is further ordered that ten cents on each ($100) one hundred dollars' worth of taxable property assessed for State revenue in Madison county be levied and collected for the purpose of paying the interest on the bonds herein authorized to be issued, and the said levy shall be collected by the sheriff of Madison county, but before he shall be authorized to collect said tax he shall exe-
178 cute bond, with sureties, approved by the county judge of Madison county, conditioned that he will faithfully and promptly collect & pay over to the proper persons or person authorized to receive the same and within the time prescribed all taxes levied under this order which may be intrusted to him for collection, and he shall receive the same compensation as is allowed by law for the time being for collecting the State revenue, and if the sheriff shall fail to collect and pay over taxes within the time prescribed he and his sureties shall be liable for the amount not paid, as required, and ten per centum thereon, to be recovered, on motion, on ten days' notice, in any court having jurisdiction of the amount not paid over, and any execution issued on such judgment shall not be replevied, but shall be endorsed by the clerk issuing the same; that no security of any kind is to be taken.

If the sheriff for thirty days after the tax is levied fail- to execute bond as required herein, then the county judge of Madison county shall appoint a collector, who shall execute bond, with securities, to be approved by the county judge, and he shall have the *the* same powers and be subject to the same liabilities, he and his sure-
179 ties, and perform the same duties as are imposed by this order on the sheriff, and all taxes levied and collected as herein provided shall be held sacred for the payment of the principal and interest of said bonds and for no other purpose.

3. The bonds authorized to be issued herein shall be delivered by the county judge to the commissioners of the sinking fund hereinafter named upon demand, who shall execute — the county judge their receipt specifying the numbers, date, and denomination of each bond, which receipt shall be recorded in the clerk's office of Madison county upon the order book of county court.

4th. J. W. Caperton, C. D. Chenault, and D. P. Armer are elected and appointed commissioners of the Kentucky Central R. R. sinking fund of Madison county, to hold office for two years, and who shall qualify and give bond, as required by law, before entering upon the discharge of their duties as such.

5. The said commissioners of the sinking fund are authorized and empowered as to the first and second installment- of stock issued to accept the proposal embodied in the contract with the Ken-
180 tucky Central Railroad Company; that the said company will take the stock as subscribed and paid for by Madison

county at not less than 37½ cents on the dollar or sell said stock at not less than said price.

6th. Of the bonds to be issued as aforesaid and delivered to the aforesaid commissioners of the sinking fund they (the said commissioners) are directed to sell and deliver to S. P. Walters, treasurer of the Louisville and Nashville railroad sinking fund of Madison county, forty-two thousand dollars in bonds at their par value; and to enable said Walters, as treasurer, to pay over said sum to said commissioner- he is authorized and empowered to sell a sufficient number of any of the bonds or securities held by him as treasurer to produce said sums, which he will pay over to said commissioners, taking their receipt for same and giving to them his receipt for the bonds delivered by them, specifying date, number, and denomination, which receipts shall be recorded in the order book of Madison county court. The bonds received by the treasurer, Walters, from the commissioner- shall be held by him as a part of the sinking fund in his hands.

181 7th. The said commissioners of the sinking fund, with the proceeds of the sale of first installment of stock issued to the county by the Kentucky Central Railroad Company and the money received from S. P. Walters, treasurer, shall pay to the Kentucky Central railroad, or its authorized agents or officers, on the 1st day of July or as soon thereafter as said company will receive it—

The first installment of the subscription of Madison county to the capital stock of said company, to wit, sixty-six thousand six hundred and sixty-six & $\frac{2}{3}$ dollars; or, in the event that said commissioners agree with the said company that it takes the first installment of stock at the price aforesaid, they will then pay as aforesaid to the company the balance, to wit, forty-one thousand six hundred and sixty-six and $\frac{66}{100}$ dollars: Provided, however, That said road shall be completed from Paris to Richmond, Ky., and cars running thereon from Paris to Richmond, Ky., on or before the 1st day of July, 1883, and W. C. Miller, James M. Smith, S. J. Scott, and James B. McCreary are appointed a committee to ascertain and report in writing to the said commissioners whether said road has been com-

182 pleted and cars running as aforesaid, and upon such report favorable to the railroad company the board of commissioners shall pay the money as aforesaid; otherwise no payment shall be made.

8th. The said commissioners are authorized and empowered to negotiate and sell the residue of the bonds not delivered to the said Walters as treasurer aforesaid, and apply the proceeds to the payment on the 1st of Oct., 1883, of the second installment of subscription of Madison to the Kentucky Central Railroad Company, provided the report of the committee shall have been made authorizing the payment, as stated in the 7th clause of this order.

9th. The commissioners of the sinking fund shall have all the powers and perform all the duties conferred and imposed by the special act of the General Assembly of the Commonwealth, approved Feb. 18th, 1882, entitled An act to authorize Madison county to issue bonds nd provide for their redemption.

STATE OF KENTUCKY:

Madison County Court. June Term.

JUNE 29 1883.

W. C, Miller, judge of the Madison county court, this day produced and filed the receipt of the commissioners of the Kentucky Central railroad sinking fund for Madison county for 42
183 bonds of said county, numbered from 201 to 242, both inclusive, and of the denomination of $1,000 each, which receipt is ordered to be recorded, and the same reads as follows, viz:

In accordance with the orders of the Madison county court the following-named bonds of Madison county, issued to pay the subscription of said county to the Kentucky Central Railroad Company, have been turned over by W. C. Miller, judge of the Madison county court, to J. W. Caperton, C. D. Chenault, and D. P. Armer, commissioners of the Kentucky Central railroad sinking fund of Madison county, viz:

Number.	Date.	No. of coupons.	Denom.
201	July 1, 1883	15	$1,000
202	" 1, "	15	1,000
203	" " "	15	1,000
204	" " "	15	1,000
205	" " "	15	1,000
206	" 1, "	15	1,000
207	" 1, "	15	1,000
208	" 1, "	15	1,000
209	" 1, "	15	1,000
210	" 1, "	15	1,000
211	" 1, "	15	1,000
212	" 1, "	15	1,000
213	" 1, "	15	1,000
214	" 1, "	15	1,000
216	" 1, "	15	1,000
217	" 1, "	15	1,000
219	" 1, "	15	1,000
184 220	" 1, "	15	1,000
221	" 1, "	15	1,000
222	" 1, "	15	1,000
223	" 1, "	15	1,000
224	" 1, "	15	1,000
225	" 1, "	15	1,000

Number.	Date.	No. of coupons.	Denom.
226	July 1, 1883	15	1,000
227	" 1, "	15	1,000
228	" 1, "	15	1,000
229	" 1, "	15	1,000
230	" 1, "	15	1,000
231	" 1, "	15	1,000
232	" 1, "	15	1,000
233	" 1, "	15	1,000
234	" 1, "	15	1,000
235	" 1, "	15	1,000
236	" 1, "	15	1,000
237	" 1, "	15	1,000
238	" 1, "	15	1,000
239	" 1, "	15	1,000
240	" 1, "	15	1,000
241	" 1, "	15	1,000
242	" 1, "	15	1,000
Amount issued July 1, 1883			$42,000

The county of Madison has the right to pay off these bonds at the expiration of 5 years, after due notice published, or let them run 15 years from date, July 1, 1883.

The coupons on each of said bonds become due from July
185 1, 1884, and onto July 1, 1898; bonds bearing 6%, payable annually at Madison Nat. Bank of Richmond, Ky.

This July 1st, 1883.

J. W. CAPERTON,
C. D. CHENAULT,
D. P. ARMER,
Commissioners of K. C. R. R. Sinking Fund.

STATE OF KENTUCKY:

Madison County Court of Claims & Levy. Called Term.

SEPT. 10TH, 1883.

Court met, pursuant to summons ordered by the judge of Madison county court, to consider the payment of the third installment of the subscription of two hundred thousand dollars voted by the legal

voters of Madison county, as set forth in the former orders of this court, and the following order, after a discussion of the question before the court, was offered by S. J. Scott, county attorney, and adopted and ordered to be recorded, viz:

It is ordered that the commissioners of the Kentucky Central railroad sinking fund of Madison county be and are authorized to sell the stock of Madison county in said railroad company, to be issued upon the payment of the last installment of subscription to said railroad company, at not less than 37½ cents on each dollar of its par value.

186 And, in order to provide for the payment of the last installment of subscription of the county to the Kentucky Central Railroad Company, it is ordered that the county judge be and is authorized to issue bonds of Madison county to the par value of $42,000.00, of denomination not less than $500.00 nor more than $1,000, payable fifteen years after date, with interest at six per cent., payable annually; but it shall be stated in the face of the bonds that the bonds may be paid at any time after five years from their date upon the order of court, as provided in the special act authorizing the issu*al* of said bonds; said bonds shall be delivered to said commissioners of the sinking fund by the county judge, who shall take their receipt for the same, specifying date, number, and denomination of each bond, and file and enter of record said receipt upon the order book of the county court; said commissioners are authorized to sell, either publicly or privately, said bonds to raise the money to pay the third installment of subscription to the railroad company as aforesaid, but said money shall not be paid over to said company until the report of a committee shall be made and

187 filed in the clerk's office of Madison county showing that said railroad company has completed the said road to the county line next Rockcastle county, according to the conditions of the subscription of Madison county, and the cars running on same to said line; the same committee appointed at the last May term, 1883, of this court to inspect the road from Richmond, Ky., to Paris, Ky., is continued and charge- with the duties aforesaid.

STATE OF KENTUCKY:

Madison County Court. September Term.

SEP. 25TH, 1887.

On motion of the commissioners of the Kentucky Central Railroad sinking fund for Madison county it is ordered that the sheriff, S. B. Willis, summons all the justice sof the peace for Madison county to meet in the court-house in Richmond, Kentucky, at 9½ o'clock a. m. on Wednesday, October 3d, 1883, to consult and consider matters in regard to the part of the Kentucky Central Railroad running through Madison county.

STATE OF KENTUCKY:

Madison County Court. October Term.

OCTOBER 1ST, 1883.

188 W. C. Miller, judge Madison county court, on this day produced and filed the receipt of the commissioners of the Kentucky Central railroad sinking fund for forty one-thousand-dollars bonds, numbered from to 243 to 282, inclusive, and three five-hundred-dollar bonds, numbered 1, 2, & 3, all bearing date of October 1st, 1883, which receipt is ordered recorded.

Said receipt reads as follows:

In accordance with the orders of the Madison county court the following-named bonds of Madison county, issued to pay the subscription of said county to the Kentucky Central Railroad Company, have been turned over by W. C. Miller, judge of the Madison county court, to J. W. Carpenter, C. D. Chenault, and D. P. Armer, commissioners of the Kentucky Central railroad sinking fund of Madison county, viz:

Number.	Date.	No. coupons.	Denom.
243	October 1, 1883	15	$1,000
244	" " "	15	1,000
245	" " "	15	1,000
246	" " "	15	1,000
247	" " "	15	1,000
248	" " "	15	1,000
249	" " "	15	1,000
250	" " "	15	1,000
251	" " "	15	1,000
253	" " "	15	1,000
254	" " "	15	1,000
249	" " "	15	1,000
250	" " "	15	1,000
251	" " "	15	1,000
252	" " "	15	1,000
253	" " "	15	1,000
189 254	" " "	15	1,000
255	" " "	15	1,000
256	" " "	15	1,000
257	" " "	15	1,000
258	" " "	15	1,000
259	" " "	15	1,000
260	" " "	15	1,000
261	" " "	15	1,000
262	" " "	15	1,000

Number.	Date.	No. coupons.	Denom.
263	October 1, 1883	15	1,000
264	" " "	15	1,000
265	" " "	15	1,000
266	" " "	15	1,000
267	" " "	15	1,000
268	" " "	15	1,000
269	" " "	15	1,000
270	" " "	15	1,000
271	" " "	15	1,000
272	" " "	15	1,000
273	" " "	15	1,000
274	" " "	15	1,000
275	" " "	15	1,000
276	" " "	15	1,000
277	" " "	15	1,000
278	" " "	15	1,000
279	" " "	15	1,000
280	" " "	15	1,000
190 281	" " "	15	1,000
282	" " "	15	1,000
283	" " "	15	1,000
1	" " "	15	500
2	" " "	15	500
3	" " "	15	500
Amount issued October 1, 1883			$41,500

The county of Madison has the right to pay off these bonds at the expiration of 5 years from date—October 1st, 1883—after due notice published, or let them run 15 years from date—Oct. 1st, 1883. The coupons on each of said bonds become due from Oct. 1, 1884, and run to Oct. 1st, 1898, bonds bearing 6% interest, payable annually at Madison National Bank of Richmond, Ky.

October 1st, 1873.—Received of W. C. Miller, judge of Madison county, the above-numbered Kentucky Central railroad bonds, 243 to 282, inclusive, each of said bonds $1,000, and three bonds of $500.00 each, Nos. 1, 2, 3.

C. D. CHENAULT,
J. W. CAPERTON,
D. P. ARMER,
Commissioners K. C. R. R.

STATE OF KENTUCKY:

Madison County Court — Levy & Claims. October Term.

OCT. 3, 1883.

Court met.

191 Present: Hon. W. E. Miller, judge, and the following associate justices, viz.: D. P. Armer, C. F. Turner, O. Bigerstaff, W. J. Scudder, Sidney Dozier, Calvin Todd, John Hill, Ed. Hester, Wm. A. Chandler, J. P. Long, Bryant Holman, W. J. Harvey, G. B. Million, John L. Griggs, S. J. Coyle, and Cyrus Young.

Court met, pursuant to summons ordered by the judge of Madison county to be issued for the justice- of the peace, to consult and consider matters in regard to the part of the Kentucky Central Railroad running through Madison county, Ky.

Ordered, That the sheriff of Madison county summons absent justices to appear at 9 o'clock on the 4th inst.

STATE OF KENTUCKY:

Madison County Court of Levy & Claims. October Term.

OCTOBER 4TH, 1883.

Court met pursuant to adjournment.

Present: Hon. W. C. Miller, judge, and the following associate justices: C. F. Turner, G. B. Million, O. Bigerstaff, Jno. L. Grigg, J. F. Todd, Cyrus Young, Calvin Todd, S. J. Coyle, Ed. Hester, W. A. Chlandler, J. P. Long, Bryant Holman, and W. J. Harvey.

The commissioners to inspect the part of the Kentucky Central railroad between Richmond and the county line between

192 Madison and Rockcastle counties being absent on their tour of inspection, in order that they may be present it is ordered that court adjourns to 11½ o'clock a. m., 4th inst.

OCT. 4TH, 1883—11½ o'clock a. m.

Court met pursuant to adjournment.

Present: Hon. W. C. Miller, judge, and the following-named associate justices: D. P. Armer, C. F. Turner, G. B. Million, O. Bigerstaff, Jno. L. Griggs, W. J. Scudder, J. F. Todd, Cyrus Young, Calvin Todd, S. J. Coyle, John Hill, Ed. Hester, W. A. Chandler, J. P. Long, Bryant Holman, and W. J. Harvey.

The following motion was offered by S. J. Coyle, Esq., viz:

Moved, That the commissioners of the K. C. R. R. are instructed to pay to the K. C. R. R. Co. on the last installment of Madison county's subscription to same the sum of $37,666⅔, provided that the K. C. R. R. Co. will accept this amount in full settlement of the last payment, the amount that the county is to receive for 666⅔ shares of stock in said road having been first deducted before fixing said amount.

It is further agreed by the court that the K. C. R. R. Co., in con-

sideration of the rebate of four (4) thousand dollars, may have
193 the right to use the road already built from Richmond to Harris station, and the same be accepted by this — as a substantial compliance with their contract with Madison county to build and equip a road from Paris to Livingston; which was adopted.

STATE OF KENTUCKY:

Madison County Court. October Term.

OCTOBER 6, 1883.

On motion of K. C. R. R. commissioners for Madison county it is ordered that the following receipt be recorded, viz:

"Received of J. W. Caperton, C. D. Chenault, & D. P. Armer, commissioners Kentucky Central railroad sinking fund of Madison county, ($66,666.66) sixty-six thousand six hundred and sixty-six dollars and sixty-six cents, being the second installment of the subscription of Madison county to the Kentucky Central Railroad Company; ($41,666.66) forty-one thousand six hundred and sixty-six dollars and sixty-six cents of said amount is in money & ($25,000.00) twenty-five thousand dollars is for 666⅔ shares of stock in the Kentucky Central Railroad Company, which Madison county is entitled to, and
which the said railroad company, by contract with Madison
194 county, agreed to take at ($37.50) thirty-seven dollars and fifty cents per share of one hundred dollars each, and which said amount for shares was ordered to be accepted by the Madison county court for said stock.

"Oct. 1st, 1883.

"KENTUCKY CENTRAL RAILROAD CO.,
"By B. S. CUNNINGHAM, *V. P.*"

STATE OF KENTUCKY:

October Term.

OCTOBER 9TH, 1887.

On this day W. C. Miller, judge of the Madison county court, produced the following receipt of J. W. Caperton, C. D. Chenault, and D. P. Armer, commissioners of the Kentucky Central railroad sinking fund of Madison county, which was ordered to be recorded. Said receipt is as follows:

In accordance with orders of the Madison county court and agreement with the Kentucky Central Railroad Company in open court the following-named bonds of Madison county, issued to pay the subscription of said county to the Kentucky Central Railroad Company, have been turned over by W. C. Miller, judge of the Madison county court, to J. W. Caperton, C. D. Chenault, and D. P. Armer, commissioners of the Kentucky Central railroad sinking fund of Madison county, viz.:

195 Number.	Date.	Coupon.	Denom.
283	October 1st, 1883	15	$1,000
284	" " "	15	1,000
285	" " "	15	1,000
286	" " "	15	1,000
287	" " "	15	1,000
288	" " "	15	1,000
289	" " "	15	1,000
290	" " "	15	1,000
291	" " "	15	1,000
292	" " "	15	1,000
293	" " "	15	1,000
294	" " "	15	1,000
295	" " "	15	1,000
296	" " "	15	1,000
297	" " "	15	1,000
298	" " "	15	1,000
299	" " "	15	1,000
300	" " "	15	500
4	" " "	15	500
5	" " "	15	500
6	" " "	15	500
7	" " "	15	500
8	" " "	15	500
9	" " "	15	500
10	" " "	15	500
11	" " "	15	500
12	" " "	15	500
13	" " "	15	500
14	" " "	15	500
15	" " "	15	500
16	" " "	15	500
17	" " "	15	500
196 17	" " "	15	500
18	" " "	15	500
19	" " "	15	500
20	" " "	15	500
21	" " "	15	500
22	" " "	15	500
23	" " "	15	500
24	" " "	15	500
25	" " "	15	500
26	" " "	15	500
27	" " "	15	500
28	" " "	15	500

Number.	Date.	Coupon.	Denom.
29	October 1st, 1883	15	500
30	" " "	15	500
31	" " "	15	500
32	" " "	15	500
33	" " "	15	500
34	" " "	15	500
35	" " "	15	500
36	" " "	15	500
37	" " "	15	500
38	" " "	15	500
39	" " "	15	500
40	" " "	15	500
41	" " "	15	500
42	" " "	15	500
43	" " "	15	500
Amount issued October 1st, 1883			$38,000

The county of Madison has the right to pay off these bonds at the expiration of 5 years from date, Oct. 1st, 1883. The coupons
197 on each of said bonds become due from Oct. 1st, 1884, and run to Oct. 1st, 1898; bonds, bearing 6%, payable annually at Madison National Bank of Richmond, Ky., October 8, 1883.

Received of W. C. Miller, judge of the Madison county court, the above-numbered Kentucky Central railroad bonds, as follows: 18 $1,000.00 bonds, serial numbers beginning with No. 283 and ending with 300, both included, making $18,000; 40 $500 bonds, serial numbers beginning with No. 4, running to and extending with No. 43, both included, making $20,000; total amount of bonds this day received by J. W. Caperton, C. D. Chenault, and D. P. Armer, commissioners of the Kentucky Central railroad fund for Madison county, $38,000.

C. D. CHENAULT,
J. W. CAPERTON,
D. P. ARMER,
Commissioners Kentucky Central R. R. Fund for Madison Co., Ky.

STATE OF KENTUCKY:

Madison Co. Court. October Term.

OCTOBER 15, 1883.

On this day C. D. Chenault, one of the commissioners of the Kentucky Central railroad sinking fund for Madison county, produced and filed the following receipts of the Kentucky Central Railroad Company for sixty-two thousand six hundred and sixty-six
198 and $\frac{66}{100}$ dollars ($62,666.66), it being the third and last installment of the subscription of Madison county to the Kentucky Central Railroad Company, which receipt was ordered to be recorded, and is as follows:

Received of J. W. Caperton, C. D. Chenault, and D. P. Armer, commissioners of Kentucky Central railroad sinking fund of Madison county, Ky., sixty-two thousand six hundred and sixty-six dollars and sixty-six cents, being the third and last installment of the subscription of Madison county to the Kentucky Central Railroad Company. ($25,000) twenty-five thousand dollars of said amount is for 666⅔ shares of stock of the Kentucky Central Railroad Company, which Madison county is entitled to, and which the said railroad company, by contract with Madison county, agreed to take at thirty-seven dollars and fifty cents *for* share, and which amount was ordered to be accepted by the Madison county court for said stock; ($37,666.66) thirty-seven thousand six hundred and sixty-six dollars and sixty-six cents is in money, and the Kentucky Central Railroad Company accepts this amount on the terms set forth
199 in the order adopted by the Madison county court dated Oct. 4, 1883, as the balance in full due said railroad company from Madison county.

Oct. 10th, 1883.

KENTUCKY CENTRAL R. R. CO.
By M. E. ENGALS.

STATE OF KENTUCKY, }
Madison County Court, } *sct:*

I, Thomas Thorpe, clerk of the county court for the county aforesaid, do certify that the foregoing is a true and correct copy of all the proceedings had in the Madison county court as to subscription of said county to the Kentucky Central Railroad Company, as shown by the records in said office.

I qualified as clerk of said court on the 14th day of August, 1882, and have been clerk of said court continuous- until the present day.

Given under my hand and seal of office this 30th day of April, 1887.

[SEAL.]

THOS. THORPE,
Clerk Madison County Court.

Fees: Thos. Thorpe, $12.00.

And on a day following, to wit, on the 2d day of June, A. D. 1887, the deposition of Charles L. Brown in behalf of the
200 Kentucky Central Railroad Company is filed herein; which said deposition is in words and figures as follows:

Circuit Court of the United States for the District of Kentucky.

BLISS & GATES

vs.

THE KENTUCKY CENTRAL RAILROAD COMPANY.

Deposition given at the office of Messrs. Ramsey, Maxwell & Mathews, Cincinnati, O., May 12th, 1887.

Present: Mr. Ramsey, for Ky. C. R. R. Co.; Mr. Noble, for L. & N. R. R. Co.

CHARLES S. BROWN, being duly sworn, said:

Examined by Mr. RAMSEY:

Q. What is your name, age, residence, and employment?

A. My name is Charles L. Brown; I am 44 years old; I reside in Covington, and am general freight agent of the Kentucky Central Railroad Company.

Q. How long have you held that position?

A. Since 1869.

—. Please state how the business of the Kentucky Central Railroad Company has been done between Milldale, Ky., and the city of Cincinnati during the last ten years. State where Milldale
201 is and the mode in which the business has been done.

(The Louisville & Nashville R. R. objects on the ground of incompetency and irrelevancy.)

A. Milldale is a little over a mile south of Covington, Ky., and is the point where the Louisville & Nashville railroad crosses and connects with the tracks of the Kentucky Central railroad. The through business between the Kentucky Central and connecting lines in Cincinnati, in car-load lots, has been handled over the Louisville and Nashville bridge, through Newport, thence to Milldale, at which point we receive from and deliver to the Louisville and Nashville all of our through business in car-load lots—nearly all.

(Same obj'n to answer as to question, and it is agreed that an exception may be taken at the close with the same effect as though made at the time question is asked or answer given.)

Q. Has the agreement under which this business has been done been in writing, and is there now a written agreement between the parties as to transfer over the bridge?

A. No, sir; there is no agreement—yes, there is a con-
202 tract dating back. I don't remember the exact date. As to what the rates of toll shall be over the bridge, that contract

is subsisting to-day—in effect at the present time; that is in writing.

Q. Have you a copy?

A. There is a copy on file in the office.

Q. Please produce and attach hereto a copy of said agreement.

A. I will furnish a copy.

(To be attached and marked Exhibit A.)

Q. Does that agreement cover the transportation from Milldale to Cincinnati or only from Milldale to Newport?

A. Yes; Milldale to Cincinnati; also Covington. Well, that is as far as they prorate—to the junction. We perform the balance of the service.

Q. Does the written agreement fix the rates to be paid by one company to the other?

A. Yes, sir; that is what fixes the rate that the Kentucky Central shall pay the Louisville & Nashville for their service.

Q. What was the rates upon the various kinds of freight paid by the Kentucky Central Company to the Louisville and Nashville Company prior to the 17th day of October, 1884?

203 A. General merchandise ranged from 2 to 2½ cents a hundred. I will give it in detail. Classes 1, 2, 3, 4 and 5, 2½ cents a hundred; grain, 2 cents per hundred; this is in car-load lots. Class A, 2 cents a hundred; class B, 2½ cents a hundred; class C, 2½ cents a hundred; coal, 2 cents a hundred; live stock, $5 per car; coaches and sleepers, $8 per car; salt, 2 cents a hundred. These rates subject to the following conditions, namely: applies only on shipments to and from Kentucky Central and Chesape-ke and Ohio railroads and does not apply on business to and from Lexington proper or points east of Lexington on Louisville, Cincinnati and Lexington Division.

Those rates were in effect up to October 17, 1884, and were issued to us by the Louisville and Nashville railroad January 7, 1884. October 17, 1884, we were notified that on and after that date the following rates would be charged the Kentucky Central on business destined to or beyond Livingston and what was then Stanford Junction, Ky. Those are the two points covered by this advance; also to Lexington, Ky.

204 Now, I will give you the rates: First class, 9c. a hundred; second class, 8 cents a hundred; third class, 7 cents a hundred; 4 class, six cents a hundred; fifth class, five cents a hundred; fifth class, under 24,000 pounds, 5 cents per hundred; fifth class, over 24,000 pounds, four cents per hundred; grain, less than car-loads, five cents per hundred; grain, car-load, 4 cents per hundred; salt, car-loads, 3½ cents per hundred; class A, 3½ cents per hundred; class B, 4½ cents per hundred; class C, 5½ cents per hundred; coal, 3 cents per hundred; live stock (horses, mules, and cattle), $8 per car; hog, single deck, sheep, double deck, $9 per car; sheep, single deck, $7 per car. That is all.

Q. At what time was your line opened to Livingston and Stanford?

A. I think we commenced about the first of September, 1884; operated about six weeks I think?

Q. What rates, then, did you have from September, 1884, to October 17, 1884, on freight from and to Livingston and Stanford?

A. We had the rates in effect prior to October 17, 1884, named in the foregoing answer.

Q. When you except Lexington from your statement, then we are left without any statement at all from Lexington. What rates had you from Lexington?

A. The rates from Lexington were subject to these rates that
205 I named, the second rates named, and that dated back a couple of years prior to the issuing of this tariff. Lexington had been excepted for at least two years, I think.

Q. Do you mean when you say Lexington was excepted from a rate that the rates you have named did not apply to Lexington?

A. Did not apply to Lexington; applied to all other local points.

Q. Then what rate did apply to Lexington prior to October 17, 1884, and what afterward?

A. These rates that I named as excepted, making Stanford and Livingston same rates as excepted Stanford and Livingston, were applicable to Lexington two years prior to 1874. I think in Feb., 1882, they made the advance on Lexington.

Q. Prior to September first, 1884, the southern terminus of the Kentucky Central road was at Lexington, was it not?

A. We ran to Stanford (Ky.) prior to September first. We also ran to Livingston, but our line south via Livingston was not opened up until September. The advance rates applied to Lexington as far back as 1882, and on October 17, 1884, the same advanced rates were applied to Stanford and Livingston.

206 Q. Prior to October 17, 1884, had you done business between Jellico and Livingston?

A. Yes—that is, through freights from points west were handled prior to October 17, 1884.

Q. Did you do business after October 17, 1874, between Livingston and Jellico?

A. We did business, I think, about a month; it may have been a little more. We had contracts out that we were bound to protect.

Q. Why did you withdraw from the business?

A. On account of the advance in rates over the Louisville & Nashville bridge, or for the delivery between Cincinnati and Milldale. In some cases the rates of freight charged amounted to more than our proportion of the through rate. I will illustrate: Every through rate is prorated—that is to say, the rate from Chicago to some point south, our proportion, based upon our mileage, would give us so many cents per hundred pounds, the amount accruing to our road in the division of the rate on a mil-age basis in many cases being much less than the charge made by the Louis-
207 ville as per the schedule of advanced rates for its service between Cincinnati and Milldale.

Q. So that you could not continue the business, except at an actual loss?

A. Yes, sir; that is the idea exactly.

Q. When you received notification of the increase from the Louisville and Nashville Company in what form was such notice?

A. A written notice by the division freight agent of the Louisville and Nashville.

Q. Have you a copy of the notice?

A. That copy was sent to New York; I think there is a copy on file in the office.

Q. If so, will you produce it and attach it hereto as Exhibit "B?"

A. Yes, sir.

Q. What answer, if any, was made to this notice on increase in Oct., 1884, on the part of your people?

A. I don't know; I reported the matter to our officials; what action they took I don't know. In the matter of the Lexington business, if that has any bearing, we protested against that charge, and they insisted on a right to exclude anything of a competative nature. There was nothing in the original contract that allows it, though

208 Q. Did you do any business south of Livingston at any time, except through business?

A. A very small amount; might have had something from local points; 75 per cent. of it is through business, if not more; the bulk of the business all went beyond Livingston.

Cross-examined by Mr. NOBLE:

Q. The protest that you spoke of in regard to the advanced rates—was that oral or by written letters?

A. Well, I think Mr. Ingalls had a personal consultation with the Louisville and Nashville people, and I had some correspondence myself with the general freight agent of the Louisville and Nashville road.

Q. Were you present when the conversation took place with Mr. Ingalls?

(Mr. Noble objects to the questions and answers in reference to any protest on the part of the Kentucky Central as to those which were in writing, unless the writing is produced, and in regard to any advanced rates, if in writing, unless the writing is produced.)

Also objects to all the foregoing questions and answers on the ground of incompetency and irrelevancy; and, not waiving,

209 but insisting upon all of its objections and exceptions, the Louisville and Nashville railroad cross-examines the witness as follows:

Q. Was there any agreement between the Louisville railroad and the Kentucky Central, aside from the original contract which was spoken of, as — the amount of charge as between Cincinnati and Milldale or Milldale and Cincinnati, until 1884?

A. I don't know of any.

Q. Did the rates continue to be 2½ cents per hundred from Cincinnati to Milldale and Milldale to Cincinnati from the date of that contract up to October, 1884?

A. Yes, sir; except as I have testified.

Q. The prices on this other price-list which you have given here did not apply to Lexington, I understand?

A. It applied for a certain number of years. I don't remember the exact date upon which they took it off, but I think it was in 1882.

Q. You think Lexington, after 1882, was not embraced in that list of low prices?

A. My recollection is that Lexington enjoyed the benefit of the lower rate until 1882.

Q. Was it not insisted by the Louisville and Nashville Rail-
210 road Company that these low rates did not apply to any freight coming from Lexington or any point south of that all the time?

A. No, sir. I know nothing about such an agreement. The only notice or information I had of anything outside of Lexington was the notice of October 17, 1884.

Q. And your understanding is that the freight was agreed on up to that time at the lower prices to Lexington and beyond?

A. No, sir. I have excepted Lexington all the time.

Q. Beyond Lexington, excluding to Lexington?

A. Aside from Lexington, the lower rates applied to all points.

Q. All points?

A. Yes, sir.

Q. Did you ship any freight from Cincinnati to Milldale by the Nashville road, which was to go to Lexington or beyond Lexington, after the extension of your road from Lexington to Livingston, at those lower rates?

A. We shipped nothing to Lexington at the lower rates after 1882. It may have been before that. I don't remember the exact date.

From the first of September to October 17 we shipped
211 to Livingston and points beyond, south, on the basis of the lower rates of freight on the bridge.

Q. Was any complaint made by the Louisville and Nashville that you shipped at those prices to those points?

A. No, sir; not up to the 17th of October; that is as far as my knowledge goes.

Q. After the extension of the Kentucky Central to Livingston, and extension of the Nashville road from Livingston to Jellico, at what rate did you ship from Cincinnati to Milldale and Milldale to Cincinnati, over the Nashville road, freight coming to or beyond Livingston or coming from Jellico?

A. We shipped at the lower rates from September first to October 17th.

Q. When you speak of your road to Stanford and the road to Livingston—the road from Richmond to Stanford is a leased road, is it not? You don't own that?

A. Yes, sir; we have a lease for ninety-nine years.

Q. That belongs to the Louisville and Nashville; when did you lease that?

A. In 1883, I think.

Q. Then you had no rate of shipments from Cincinnati to Milldale of freight going over that road, as your road, in 1881?

212 A. No.

Q. Not until you got the lease in 1883?

A. We didn't take charge of it until 1883.

Q. The road from Richmond to Stanford is not a part of the Kentucky Central, is it?

A. It is a part of it, so far as the lease is concerned; it is a lease for ninety-nine years.

Q. You count it as a part of the Kentucky Central road?

A. Yes.

Q. It is a road operated by the Kentucky Central, but the Kentucky Central proper is the road that runs to Winchester, Lexington, and Livingston?

A. Yes, sir; and from Richmond to Stanford Junction under lease.

Q. Where the Richmond Branch to Stanford strikes the Knoxville Branch of the Louisville and Nashville is quite a distance west from Livingston, isn't it—some 34 miles?

A. From Richmond to Stanford is 34 miles; from Richmond to Livingston about the same distance; from Stanford to *Stanford to* Livingston is about 35 to 40 miles; between Livingston and Stanford, I mean on the Knoxville branch of the Louisville and Nashville railroad.

Q. Was there ever any contract made between the Ken-

213 tucky Central and *and* Louisville & Nashville as to the price of shipment over the Louisville between Cincinnati and Milldale after the contract that you first spoke of, executed, I believe, in 1879?

A. I know of none.

Q. Have you any written authority from the Louisville and Nashville Railroad Company binding them to except freight from Cincinnati to Milldale which was to go over your road to Lexington or south of Lexington at any time at the lower rate of 2½ cts. a hundred?

A. We have their regular issue of rates over their official signanature, as applicable to all points without reserve, excepting as stated, to Lexington, as stated. I do not know as you may call it a contract. It is an issue of rates on their part, applicable to our business.

Q. Were the rates issued for your company or for the public?

A. Issued for us; not specially for us, but I suppose the Pennsylvania road enjoyed the benefits of the same rates we would.

Q. How often did you get those rates?

A. Well, I couldn't state; some times there were some slight changes in the classification; perhaps once or twice a year they would change.

214 Q. But there was no contract in reference to the freight; simply they issued and sent you tariff rates?

A. They conformed to the contract by the issuance of these rates.

Q. Can you furnish a list of those different tariff rates under which you shipped over that part of the Louisville and Nashville road at the different times up to the present time?

A. Well, I may be able to furnish them; I can't say as to that; I will find them as far as practicable.

(To be attached as exhibits and marked "Exhibits C to O," both inclusive.)

Q. Did you not ship over the Louisville road, between Livingston and Jellico, up to about the middle of March, 1885?

A. No, sir. No; I don't think we continued to operate that long; my impression is that we did not run more than six weeks.

(Witness subsequently added to this answer):

In answering the question I had in my mind the length of time we enjoyed the low rates on Southern business—that is, September 1st to October 17, we did continue to receive and forward freight for points south of Livingston and Jellico up to May, 1885, when
215 we were compelled to discontinue rates and arrangements on account — high rates over bridge.

Q. And did you not receive freight at Jellico from the roads that connect with the Louisville and Nashville at that point—freight to be shipped over the Louisville and Nashville to Livingston and thence by your road—as late as the middle of March, 1885?

A. I don't think we did.

Q. Have you any date by which you can fix the date when you ceased to receive freight to go beyond Livingston or when you ceased te receive freight from Jellico coming north?

A. I think I can get it; yes, sir.

(Signature of witness to deposition waived.)

STATE OF OHIO, *Hamilton Co.*, } *ss:*

By consent of parties foregoing deposition taken before me, a notary public for the county named, at office of Ramsey, Maxwell and Mathews, Cincinnati, Ohio, May 12, 1887, and after I had duly sworn witness I stenographically noted the questions and answers and subsequently transcribed same as above.

[SEAL.]

W. H. POPE,
Notary Public in and for Hamilton Co., Ohio.

216 EXHIBIT A. W. H. P.

(Copy.)

Contract with the Louisville, Cincinnati and Lexington, and Pittsburgh, Cincinnati & St. Louis Railway Companies, July 18th, 1879.

This contract, made this 18th day of July, 1879, between the Louisville, Cincinnati & Lexington Railway Company, first party,

and the Kentucky Central Railroad Company, second party, and the Pittsburgh, Cincinnati and St. Louis Railway Company, third party, witnesseth:

Whereas it is believed that increased facilities at the stock and freight yards of the Kentucky Central Railroad Company, at Covington, Kentucky, as hereinafter provided for, will be mutually beneficial to the above-mentioned companies, it is hereby agreed between the parties hereto as follows, viz:

SECTION 1. That the Kentucky Central Railroad Company shall make arrangements for the delivery and reshipment of stock at Covington stock-yards with parties who are or may be in charge
217 of said stock-yards, and will require them to execute a guarantee that the cattle, hog, and sheep pens, chutes, and all fixtures pertaining thereto shall be put in good order with all modern improvements as soon as practicable, and will require said parties to obligate themselves to keep the pens, chutes, &c., in good order and condition as long as this contract shall be in effect, and will also require said parties to obligate themselves to become responsible for all damage resulting from want of care or improper treatment of live stock while under their charge or control in connection with the possession of said yards, pens, chutes, &c.

SECTION 2. That the Louisville, Cincinnati and Lexington Railway Company and the Kentucky Central Railroad Company shall, at their own expense, provide and establish the requisite facilities for performing the services hereinafter mentioned, it being understood and agreed that all necessary side tracks and other conveniences for transacting the business promptly and efficiently shall be constructed so that the business herein contemplated between the several companies hereto may be commenced not later than August 1st, 1879.

218 SECTION 3. That all live stock, grain, or other freight from the Louisville, Cincinnati and Lexington railway destined to go east of Cincinnati by the Pittsburgh, Cincinnati and St. Louis railway shall be delivered at Cincinnati, as heretofore, it being understood that no change shall be made in the present manner of doing business between the Louisville, Cincinnati and St. Louis Railway Company.

SECTION 4. That live stock and other freight from the Louisville, Cincinnati and Lexington railway consigned locally to Covington shall be subject to a charge of one dollar per car, to be paid by the Louisville, Cincinnati and Lexington Company to the Kentucky Central Railroad Company.

The Pittsburgh, Cincinnati and St. Louis Railway Company is not to pay any proportion of said one dollar charge, nor is said last-named company to be subject to any additional charge for loading and unloading; neither is the Louisville, Cincinnati and Lexington Railway Company to be subject to any charge for service for loading or unloading cars.

219 Freight from Covington to points on the line of the Louisville, Cincinnati and Lexington railway is not to be hau
and billed by the Kentucky Central Railroad Company and d

ered to the Louisville, Cincinnati and Lexington Railway Company at the junction in South Covington, Kentucky, on such terms as may be agreed upon by the Kentucky Central Railroad Company and the Louisville, Cincinnati and Lexington Railway Company.

SECTION 5. That a joint agent shall be appointed at the Kentucky Central Railroad Company's yards at Covington to attend to the collection of freight bills and for the billing of live stock and other freight loaded or transferred for shipment east via the Louisville, Cincinnati and Lexington Railway, the expense of such agency to be paid by the several parties heretofore, one-third (⅓) each.

SECTION 6. That all live stock or other freight received at the Kentucky Central Railroad Company's yards from the road of that company and live stock from the Louisville, Cincinnati and Lexington railway billed locally by the said companies to said yards and afterward shipped to the east via the Pittsburgh, Cincinnati and St.
220 Louis railway shall be loaded or transferred to the cars of the Pittsburgh, Cincinnati and St. Louis Railway Company and billed as per instructions of that company and delivered by the Kentucky Central Railroad Company to the Louisville, Cincinnati and Lexington Railway Company without any charge.

SECTION 7. That the Louisville, Cincinnati and Lexington Railway Company shall receive from the *the* junction of the Kentucky Central railroad freight or live stock consigned to go via the Pittsburgh, Cincinnati and St. Louis railway and transport the same from the Kentucky Central railroad junction to the tracks of the Pittsburgh, Cincinnati and St. Louis Railway Company at Cincinnati at the following prices, to be paid by the Pittsburgh, Cincinnati and St. Louis Railway Company, viz., live stock, five dollars per carload, and dead or other freights, two and a half (2½) cents per one hundred pounds, it being understood that so far as practicable cars of dead freight shall not be loaded with less than 20,000 pounds each, and that all cars of live stock or freight shall be loaded,
221 transferred, transported, and delivered promptly each day at such hours as may suit the running of trains and conduce to the general benefit of the parties hereto and the success of the enterprise herein contemplated. Empty cars each way shall be transferred free.

SECTION 8. That no mileage shall be charged the Louisville, Cincinnati and Lexington Railway Company on loaded or empty cars used in the business between Cincinnati and the junction with the Kentucky Central railroad.

SECTION 9. That the Louisville, Cincinnati and Lexington Railway Company and the Kentucky Central Railroad Company shall receive business from the Pittsburgh, Cincinnati and St. Louis Railway Company destined for Covington, delivery on the same terms as stipulated in the preceeding sections, the said freight to be loaded by the consignees.

SECTION 10. That live stock or dead freight received by the Kentucky Central Railroad Company at its Covington yards and landed for shipment east shall not be subjected to any charge Louisville that made by the Louisville, Cincinnati and Lexington

222 Railway Company to the Pittsburgh, Cincinnati and St. Louis Railway Company for delivering to the last-named company, as heretofore mentioned.

SECTION 11. That the Kentucky Central Railroad Company shall have the right to have any live stock or merchandise (not provided for in the preceeding sections) and destined to Cincinnati or to the connection of the Pittsburgh, Cincinnati and St. Louis Railway Company transferred by the Louisville, Cincinnati and Lexington Railway Company on the same terms as named in section 8, to be paid by the Kentucky Central Railroad Company.

SECTION 12. This contract shall continue in full force for twelve months from date, after the expiration of which time it shall be discontinued, at the option of either party, upon giving the other two parties thirty days' written notice: Provided, however, That if before the expiration of twelve months the Louisville, Cincinnati and Lexington Railway Co. shall find it necessary to discontinue crossing the Newport and Cincinnati bridge with its business it shall, in that event, be obligatory on said Louisville, Cincinnati
223 and Lexington Railway Co., with the consent of said Newport and Cincinnati Bridge Company, to transport the business of the Kentucky Central Railroad Company for the unexpired portion of the twelve months going in either direction over said bridge upon the terms as stipulated in the contract.

In witness whereof the parties to this agreement have caused their corporate seals to be hereunto affixed, attested by their proper officers, respectively.

(Signed) THE LOUISVILLE, CINCINNATI AND LEXINGTON RAILWAY COMPANY,
By J. B. WILDER, *President.*

Attest: W. EASTWOOD, *Secretary.*

Signed, sealed, and delivered in the presence of—
W. McNORRIS.
K. McLEOD.

(Signed) THE KENTUCKY CENTRAL RAILROAD COMPANY,
By WM. ERNST, *President.*

Attest: C. H. BRONSON, *Secretary.*

Signed, sealed, and delivered in the presence of—
S. F. B. MORSE.
JAS. C. ERNST.

224 (Signed) THE PITTSBURGH, CINCINNATI AND ST. LOUIS RAILWAY CO.,
By WM. SHAW, *2nd Vice-President.*

Attest: S. B. LIGGERT,
Way Company, Ass't Secretary.

Signed, sealed, and delivered in the presence of—
WM. JACKSON.
J. H. B. McKNIGHT.

"EXHIBIT B." W. H. P.

Copy.

Arbitraries between Cincinnati and Milldale.

LOUISVILLE, KY., *October* 17, 1884.

C. L. Brown, Esq., D. F. A., Covington.

DEAR SIR: Our people have decided that commencing 20th inst. we will charge local rates between Cincinnati and Milldale on traffic to or from K. C. R. R. destined to or originating at Lexington, Ky., Livingston, Ky., Stanford Junction, Ky., and Livingston, Ky., via the Knoxville Branch of the L. & N. R. R.

I enclose copy of our local tariff sheet No. 5 from Cincinnati, which shows the tariff rates between Milldale and Cincinnati.

Yours truly,

(Signed) H. F. SMITH,
D. F. A. L., C. & L. Div. L. & N. R. R.

225 EXHIBIT C. W. H. P. Aug. 27, '79.

In effect Aug. 25th, '79. Expires when changed.

Between Cov. and P., C. & St. L. depot, Cin'ti. Given to all shippers.

Dead freights, 2½c. per 100 lbs. Live stock, $5.00 per car.

It being understood that so far as practicable cars of dead freight shall be loaded with not less than 20,000 lbs.

EDGAR HILL, *G. F. A.*

EXHIBIT D. W. H. P. Oct. 26, '81.

In effect Oct. 24. Expires when changed.

Between Cin'ti, O., and Covington, Ky. Given to K. C. R'y.

All classes freight in c. l. not less than 24,000 lbs., 2½c. per 100 lbs. Live stock, $5.00 per car.

All cars must be weighed and original point of shipment must be given in every instance.

S. S. PARKER, *G. F. A.*

226 EXHIBIT E. "W. H. P." Nov. 15, '81.

In effect Nov. 5th. Expires when changed.

Between Cin'ti, O., and Covington, Ky. Given to K. C. and C. & O. R'ys.

Coal, lumber, stone, lime, salt, flour, grain, and similar freights, c. l., 2c. per 100 lbs.

All other classes freight, c. l. and l. c. l., 2½c. per 100 lbs. Live stock, $5.00 per car.

Abrogate special 768.

B. F. MITCHELL, *D. F. A.*

EXHIBIT F. "W. H. P."

LOUISVILLE, *Feb.* 11, '82.

W. A. Peter, Esq., ag't, Cov., Ky.

D'R SIR: The special rate named — the K. C. R. R. on business to and from Cin'ti and South Cov. was not intended to and does not apply to and from Lexington proper, and on all such shipments we must have our full local tariff rates between Cov. and Cin'ti. I hope this is plain enough to be understood.

Yours, B. F. MITCHELL.

227 EXHIBIT G. W. H. P. Jan. 1, '83.

Jan. 1st.—Covington to Cin'ti.

C. Quarrier, Esq., compt. L. & N. R'y, Louisville, Ky:

Coal, lumber, stone, lime, salt, flour, grain, and similar freights, c. l. and l. c. l., 2½c. per 100 lbs.

Live stock, $5.00 per car.

This rate applies only on shipments from K. C. & C. & O. R. R's.

B. F. MITCHELL, *D. F. A.*

EXHIBIT H. ("W. H. P.") Jan. 1, '84.

Between Cin'ti and Covington.

Class	1	2	3	4	C. L.* 5	L. C. L.† 5	Grain.	Salt.
	2½	2½	2½	2½	2½	2½	2	2

A.	B.	C.	Coal.	Live stock per car.	Coaches & sleepers.
2	2½	2½	2	5 00	8 00

Governed by local classification, Jan. 1, '84.

Applies only on shipments to and from K. C. & C. & O. R'y, and does not apply to *ship* shipments from or to Lex., Ky., via K. C. R. R.

H. F. SMITH, *D. F. A.*

*24,000 lbs. † Less than 24,000 lbs. and grain L. C. L.

228 EXHIBIT I. "W. H. P." Jan. 7, '84.

Between Cin'ti & Covington.

Per 100 lbs.

Class	1	2	3	4	5	Grain.	Salt.
	2½	2½	2½	2½	2½	2	2

A.	B.	C.	Coal.	Live stock.	Coaches & sleepers.
2	2½	2½	2½–2	$5 per car.	$8

Governed by local classification, Jan. 1, '84.
Applies only on shipping to and from K. C. & C. & O. R'ys.
And does not apply on business to or from Lexington proper or points east of Lexington on L., C. & L. Div.
Abrogate special #49.

H. F. SMITH, *D. F. A.*

EXHIBIT J. "W. H. P." Jan. 25th, '84.

Between Cin'ti and Milldale.

Empty freight cars, $1.65 per car.
When to or from K. C. R. R. and all kinds other than P., C. & St. L. R'y.

H. F. SMITH, *D. F. A.*

EXHIBIT K. "W. H. C." Jan. 1, '85.

Between P., C. & St. L. depot, Cin'ti, & K. C. R. R., Covington.

229 Per 100 lbs. in c. l. not less than 20,000 lbs.

Class	1	2	3	4	5	Grain.	Salt.
	2½c.	2½	2½	2½	2½	2	2

A.	B.	C.	Coal.
2	2½	2½	2

Live stock, $5.00 per car.
Sleepers and coaches, $8.00 each.
Applies on all tariff to and from K. C. R. R. or C. & O., except tariff to or from Lexington and points west thereof, to or from Livingston and points beyond, in competition with L. & N. R'y.
Applies on business to and from P., C. & St. L. R'y only.

H. F. SMITH, *D. F. A.*

EXHIBIT L. "W. H. P." Jan. 1, '85.

Between P., C. & St. L. R'y, Cin'ti, O., & Milldale, Ky.

Per 100 lbs. in c. l. not less than 24,000 lbs.

Class	1	2	3	4	5	Grain.	Salt.
	2½	2½	2½	2½	2½	2	2

A.	B.	C.	Coal.
2	2½	2½	2

Live stock, per car, $5.00.
Sleepers & coaches, each, $8.00.
Applies on all traffic to and from K. C. R. R. or C. & O., except traffic to or from Lexington and points beyond in com. with L. & N. R'y.

H. F. SMITH, *D. F. A.*

230 EXHIBIT M. "W. H. P." Jan. 1, '85.

Between Cin'ti, O., and Milldale, Ky.

Rates of local traffic No. 5, Jan. 1, '84, to apply on business via the K. C. R. R.—

To or from Lexington and all points west.
" " Stanford " " beyond via L. & N. R. R.
" " Livingston " " " " " "

H. F. SMITH, *D. F. A.*

EXHIBIT N. "W. H. P." Dec. 29, '85.

Between Cin'ti and Milldale.

Empty freight cars, —.

Please refer to rate 200, dated May 18, '85, and note same expires Dec. 31, '85.

B. F. MITCHELL, *D. F. A.*

EXHIBIT O. "W. H. P." Jan. 1, '86.

Between Cin'ti, O., and Milldale, Ky.

Rates of local traffic, dated July 1, '85, to apply on business via the K. C. R. R.—

To or from Lexington and points west.
" " Stanford Junc. " beyond via L. & N.
" " Livingston " " " "

231 Supersedes rates 100, Jan. 15, 1886.

D. F. A.

The deposition of M. H. Smith, taken on the 28th day of April, 1887, at the office of L. & N. R. R. Co., at Louisville, county of Jefferson and State of Kentucky, to be read as evidence on behalf of the L. & N., intervener in an action between Bliss & Gates, trustees, plaintiff, and Kentucky Central R. R., defendant, now pending in the U. S. cir. court at Cov., Ky., both parties, by attorney, being present.

M. H. SMITH, being duly sworn and examined by Mr. NOBLE, as attorney for the L. & N. R. R., deposed as follows:

1. State what connection you have, if any, with the Louisville & Nashville Railroad Company, how long have you been connected with that road, & in what capacity.

A. I was employed from August, 1866, until June, 1869, as local agent at Louisville, and from 1869 until October, 1878, as general freight agent of the Louisville & Nashville Railroad Company, and from January, 1882, until July, 1882, I was third vice-president and

traffic manager, and from July, 1882, until June, 1884, vice-
232 president; the early part of the time vice-president and general manager. From July, 1884, until October, 1886, I was president; since October, 1886, first vice-president.

2. Are you acquainted with C. P. Huntington?

A. Yes, sir.

3. What was he engaged in in the fall of 1884, immediately previous, and subsequent to that time?

A. He was president of the Kentucky Central Railroad from some time in 1884 until the present time, so far as I know.

4. I will show you what purports to be a copy of the contract filed in this suit, executed August 8th, 1884, professedly between the Louisville & Nashville Railroad Co. and the Kentucky Central Railroad Co., and ask you to state whether it is, in your judgment, a true copy, and by whom it was executed.

A. In my judgment, it is a true copy, and was executed by myself as president of the Louisville & Nashville Railroad Co., and R. K. Warren, assistant secretary, C. P. Huntington, president, and R. A. Jones, secretary, of the Kentucky Central Railroad Co.

5. Were the seals of the respective companies attached to the original contract?

A. They were, to the best of my knowledge.

233 6. By this copy there seems to be an amendment, without date, executed by yourself for the Louisville & Nashville Railroad Co., and the Kentucky Central by C. W. Smith, general manager; state whether or not that was a part of the original contract also.

A. No, sir; not a part of the original; it was an amendment made afterwards. This additional contract or amendment was negotiated between C. W. Smith, general manager of the Kentucky Central, and myself. I have before me a press copy of the original amendment without date. I have an acknowledgment from Mr. Smith of his receipt of the amendment to that contract, dated November 7th, 1884, acknowledging the receipt of my letter of November 4th enclosing it. I have also the correspondence preceding the execution of that amendment.

7. Preceding that amendment, upon the same paper with this copy, I find what purports to be a certified copy of the action of the board of directors of the Kentucky Central Railroad Co. What do you know about that?

A. The contract was submitted to the board of directors of
234 the Louisville and Nashville Railroad Co. in New York on August 12th, 1884, and, on motion, was laid over until the next meeting, so that the directors could see it. At a subsequent meeting it was brought up and, on motion, it was approved by the board of directors, and the president of the company was authorized to execute and deliver it. At my request the assistant secretary furnished me with a certified extract from the proceedings, showing that the president was authorized to execute it. I forwarded that certified extract September 6th to the vice-president of the Kentucky Central Railroad Co. and asked him to furnish me with a similar

copy of the action of the Kentucky Central Railroad Co. I received a communication, dated Louisville, Ky., October 1st, 1884, enclosing a certified extract from the minutes of the meeting of the board of directors of the Kentucky Central Railroad Co., held on the 23d of Sep., approving and confirming the action of the president of that company in executing the contract, which I forwarded to R. K. Warren, secretary, on Oct. 2d, for filing.

235 8. Who was vice-president of the Kentucky *of the Kentucky* Railroad Co. at that time?

A. John Echols.

9. Have you the letter you wrote to him communicating the action of your board of directors and his answer communicating the action of their board of directors?

A. I have. I have the press copy of my letter to him and the original from him.

10. What is the date of your letter?

A. As I stated in my answer, it was dated September 6th, 1884. He acknowledged the receipt of that letter September 9th, 1884, and then October 1st he wrote me a letter reading as follows:

"OFFICE OF THE VICE-PRESIDENT,
"LOUISVILLE, KY., *Oct. 1st*, 1884.

"M. H. Smith, Esq., pres't L. & N. R. R. Co., Louisville.

"MY DEAR SIR: In accordance with a request received from you several weeks ago, I hand to you herewith a certified copy of a resolution adopted by the board of directors of the Ky. Central R. R. Co., at a meeting held on the 23d ulto., approving and confirming the action of the president of that company in executing contract between your Co. and the K. C. R. R. Co., dated Aug. 8, '84.

"Please acknowledge receipt and oblige yours very truly,
"JNO. ECHOLS,
"*Vice-President K. C. R. R. Co.*"

236 Said letter is hereto attached, marked Exhibit "C."

My letter to Gen. Echols of date Sept. 6th, 1884, reads as follows:

SEPTEMBER 6, 1884.

Gen'l Jno. Echols, V. P. C. O. & S. W. R'y, Louisville.

DEAR SIR: Enclosed I beg to hand certified extract from the minutes of the meeting of our board of directors ratifying the execution of the contract with the Ky. Central R. R. Co. for use of our line between Livingston and Jellico. I will be glad if you will furnish me similar copy of the action of your company whenever such may be taken.

Yours very truly,

M. H. SMITH, *Pres't.*

Said letter is hereto attached, marked Exhibit "A."

Gen. Echols' letter of September 9th reads as follows:

"OFFICE OF THE VICE-PRESIDENT,
"LOUISVILLE, KY., *Sept. 9th*, 1884.

"M. H. Smith, Esq., pres't L. & N. R. R., Louisville.

"MY DEAR SIR: I am — receipt of your favor of the 6th inst., transmitting a copy of the resolution of your board confirming the contract between your company and the Ky. Central R. R. Co. for joint use of the Knoxville Branch extension.

"I have forwarded the letter to Mr. C. P. Huntington, with the request that he send me a similar copy of the resolution of
237 the K. C. board as soon as action is taken upon the matter, and when I receive it I will forward it to you without delay.

"Yours very truly,

"JNO. ECHOLS,
"*Vice-Pres't.*"

Said letter is hereto attached, marked Exhibit "B."

11. Have you any objection to filing those two original letters from him and your press copy as parts of your deposition?

A. Not the slightest. I have already stated that I filed them as Exhibits A, B, and C. The letters of Gen. Echols are upon the letter-heads of the Chesapeake, Ohio & Southwestern Railway Co.

12. Had he any connection with the Chesapeake, Ohio and Southwestern Railway Co. at that time?

A. He was vice-president of the Chesapeake, Ohio and Southwestern and, I think, he was vice-president of the Chesapeake and Ohio proper, but I am not certain. His letter of Oct. 1st is signed vice-president K. C. R. R. Co.

13. Is the copy of the resolution which is attached to that copy of the contract similar to the copy that he sent you?

A. To the best of my knowledge, it is.

14. Have you the record of the board of directors of your company present?

238 A. I have.

15. Please read the record of the meeting at which the subject of this contract was brought up first and laid over, and the subsequent meeting, at which it was ratified.

A. "New York, August 12th, 1884.—On motion of J. S. Rogers, seconded by Mr. Probst, it was resolved that the traffic agreement between the Kentucky Central Railroad Co. and the Louisville & Nashville Railroad Co. for business between Jellico and Livingston be laid over until the next meeting, so that the directors can see it."

"New York, August 26, 1884.—On motion of Mr. Williams, seconded by Mr. Clark, it was resolved that the contract with the Kentucky Central Railroad Co. for use of track between Livingston and Jellico be again laid over until the next meeting."

"New York, August 30th, 1884.—The agreement between this company and the Kentucky Central Railroad Co. was again brought up for action, and it was, on motion of Mr. Williams, seconded by Mr. Clark, resolved that the action of the president of this company be,

and is hereby, approved in the execution and delivery of said
239 contract on behalf of this company and in conformity with the action of the former board of directors of December 22d, 1880."

16. You have read from the minutes of the board of directors of the meetings held in New York?

A. Yes, sir.

17. How long preceeding the final execution of this contract were negotiations entered into in reference to it, and by whom were they commenced?

Question objected to on behalf of the Central Railroad Co. and disengaged trustees and Pardee, trustee.

A. The contract was executed in 1884. Preliminary negotiations were commenced in October 1880, and were — upon the application of the president of the Kentucky Central Railroad Co. and of the officers of the Knoxville & Ohio railroad, William Ernst, president of the Kentucky Central, at the same time co-operating with officers of the Knoxville & Ohio railroad.

18. How did they commence?

A. By a letter from Wm. Ernst, president, dated October 28th, 1880, to E. P. Alexander, second vice-president of the Louisville and Nashville Railroad Co.

Said letter reads as follows:

240 "Kentucky Central Railroad Company, president's office.

COVINGTON, KY., *Oct.* 28, 1880.

E. P. Alexander, Esq., 2d vice-pres't L. & N. R. R. Co., Louisville, Ky.

DEAR SIR: We would be pleased to have a conference with you some day next week in reference to the proposed Knoxville connection. Will you name a day when it will suit you to meet us for that purpose? Col. C. M. McGhee, of Knoxville, proposes to meet with us, and I have promised to advise him of the day you fix upon.

Yours truly, WM. ERNST, *Pt.*"

Said letter is hereto attached, marked Exhibit "D."

19. What company is referred to under the name of the Knoxville & Ohio road?

A. A railroad then running from Knoxville to a point twenty miles east of Jellico, and which under these preliminary negotiations was to extend to Jellico.

20. Is it any part of the system of roads known as the East Tennessee, Virginia & Georgia Railroad Co.?

A. It is leased by the East Tennessee, Virginia & Georgia Railroad Co.

It is agreed between counsel that exceptions to questions and answers in this deposition may hereafter be taken with the same effect as if noted at the taking of this deposition.

241 By the WITNESS: I have also a telegram from Mr. Earnst, reading as follows:

"COVINGTON, KY.

E. P. Alexander, 2d vice-pres't, Louisville:

Thursday next will suit us. We will be down on morning train of that day.

WM. ERNST, *Pres't.*"

Said telegram is hereto attached, marked Exhibit "E."

21. Did Mr. Ernst, the president of the Kentucky Central, come down in accordance with the suggestion of this letter and telegram?

A. I cannot answer that from my own knowledge, but he was here either that day or within a few days after that, for I find on November 4th, 1880, the following letter from Mr. Alexander, second vice-president, to Wm. Ernst, president:

"Louisville & Nashville Railroad Company, office second vice-president.

LOUISVILLE, KY., *Nov. 4th*, 1880.

Wm. Ernst, pres't.

DEAR SIR: I suggest the following outline of the contract between our respective companies for giving your company joint traffic right over the proposed extension of our Knoxville Branch to the Tennessee State line.

1st. This company to extend its line to a connection with
242 the Knoxville & Ohio railroad at the State line and allow your company to connect with us at whatever point north of Livingston you see fit, and to give your company equal traffic rights in every respect for all through business from all points on or over your line to points in Tennessee or beyond, with the privilege of running your own trains under your own men and on schedules satisfactory to yourselves, should you so desire.

2nd. This company to estimate the cost *of* it of the completed road from the point of junction with your line to the State line, including water stations and side tracks, right of way, &c., and everything except depot stations and platforms.

On one-half of this total cost your company to pay us interest at six per cent. per annum, semi-annually, from the day when your first train passes over the road.

You also to pay annually one-half of the cost of maintenance, repairs and improvements of the joint road, except the salaries of local station agents.

3rd. The local business on the joint track to be reserved to this company, and should your trains do any of it the revenue
243 from point of junction to local point at which the business is done to be paid to us at our local rates as if it had been given to our train at junction or gone by our train to junction.

4th. Our superintendent of transportation to have full and entire control of all your trains and men while on the joint track, but to

run them on schedules satisfactory to you and recognizing your equal rights.

If any difficulty or complaint arises it shall be adjusted by arbitration.

But should any damage to person or property result from any action of your men your company to be responsible, unless the action was by direct order of our superintendent of transportation.

5th. Supplemental contracts may be had from time to time by which we undertake to handle your trains for you, and any misunderstanding to be arbitrated.

Respectfully yours,

(Signed) C. P. ALEXANDER,
Second Vice-President."

Said letter is attached hereto, marked Exhibit "F."

22. Was that proposition modified at any time?

244 A. Yes, sir; as follows:

Louisville & Nashville Railroad Co., office of second vice-president.

LOUISVILLE, KY., *Nov. 30th*, 1880.

Wm. Ernst, pres't.

DEAR SIR: I will be willing to accept the following modification of terms, proposed to you in my letter of Nov'r 4th, concerning joint traffic arrangements with your company over our Knoxville Branch and its proposed extension to the Tennessee State line.

Paragraph third of proposed arrangement reserves to this company all business to or from points on the track to be used in common and requires your company to pay to this company its local rates on all business which your road may bring to or take from such points between said points and the point of junction where your road unites with ours.

I am willing to deduct from such payments a certain rate per ton per mile (some fraction of a cent), which shall be agreed upon between us or by arbitration, which shall represent, as nearly as possible, the actual cost of your company of transporting the
245 freight between the junction point and its point of origin or destination, so that this service shall not be an actual loss of money to your company.

Also I am willing to agree that our local rates over the track to be used by your company shall not be higher than the average local rates over all other parts of our road.

I think that our board will also be entirely willing to have your company, if you so desire to, yourselves make the extension from London to the State line, allowing this company to work over such extension on exactly the same terms as we have proposed to you, which I would consider preferable to our building the extension ourselves.

Very respectfully yours,

(Signed) E. P. ALEXANDER, *2nd V. P.*

Said letter is attached hereto, marked Exhibit "G."

It is consented that the copies herewith filed may be used with the same effect as if press copies of the original letters had been filed, but with no other or further effect.

23. In the letter which you file, dated October 28th, 1880 (Exhibit D), from Mr. Ernst to Mr. Alexander, he speaks
246 of Col. C. M. McGhee, of Knoxville, coming down with him. Do you know what connection, if any, Mr. McGhee had with the Knoxville & Ohio road?

A. He was an officer of the Knoxville & Ohio road; I think president; either president or vice-president.

By Col. BULLITT:

Q. These letters and matters to which you are referring—have you personal knowledge of the matters contained in them, or are they simply letters you find in the office?

A. They are letters I find in the office.

Q. You were not yourself connected with these negotiations?

A. Not at that time.

Q. You were not connected with the railroad at that time?

A. Not at that time. I was familiar with the negotiations soon after that.

By Judge NOBLE:

24. I will ask you to examine this letter to which I have referred, dated October 28th, 1880, and examine the signatare of William Ernst thereto and say whether or not that is his signature, if you are acquainted with his handwriting.

A. I cannot answer that. I am not familiar with his handwriting.

25. Can you state whether about the time or subsequent to
247 the date of this letter of October 28th, 1880, the Kentucky Central Railroad Co. entered into any sort of contract with that Knoxville & Ohio Railroad Co. in reference to traffic or freight between here and Cincinnati or in reference to a connection between their road and the Knoxville and Ohio?

A. I have knowledge of a contract between the Kentucky Central railroad and the East Tennessee, Virginia & Georgia railroad whereby the East Tennessee, Virginia and Georgia railroad assumed an interest in the lease of the Louisville and Nashville Railroad Co., as described in that contract of August 8th, 1884.

26. About when was that contract entered into?

A. I cannot give you any definite information as to the date; I have no specific information of my own.

27. Was the fact that such a contract had been entered into between those two companies made known to your company by either of them at the time?

A. No, sir; no, indeed.

28. Was the contract entered into between them beneficial or prejudicial to your company?

A. Prejudicial; decidedly so.

248 29. Subsequent to that time did the Louisville & Nashville Railroad Co. enter into any contract with that same East Tennessee, Virginia & Georgia railroad?

A. Subsequent to what time?

30. The time that the Central Kentucky concluded their contract.

A. No, sir; none whatever; no contracts; nothing but the usual current exchange of business on the usual terms.

31. Has any contract ever been made?

A. None has ever been made between the companies since or at any time; no such agreement has ever been made.

32. Did your company have any contract with the East Tennessee, Virginia & Georgia Railroad Co. in reference to the construction of your road from Livingston to Jellico?

A. Yes, sir.

33. Was that before or after the execution of this contract sued upon?

A. Before.

34. State when that contract was made.

A. The contract was with the Knoxville & Ohio and after guaranteed by the East Tennessee, Virginia and Georgia road. It was approved by the board of directors at its meeting in New York December 22d, 1880.

249 35. Was that fact known to the Kentucky Central at the time?

A. A communication was authorized to be sent to the Knoxville and Ohio road. The following communication was authorized:

"NEW YORK, *December 11th*, 1880.

"Knoxville & Ohio Railroad Co., C. M. McGhee, Esqr., pres't:

"Referring to a contract about to be made between *to* Louisville & Nashville Railroad Co. and the Knoxville and Ohio Railroad Co., under which each agrees with the other to meet at the boundary between the States of Kentucky and Tennessee on or before the 1st of July, 1882, I have to say for and on behalf of the Louisville & Nashville Railroad Co. that that company will, at the proper time and in the proper manner, enter into a contract between itself and the Kentucky Central Railroad Co. granting to the latter the right to work over the line of the Louisville & Nashville Railroad Co. between the point at which they shall connect with our road and the Tennessee State line upon terms substantially indicated to the Kentucky Central Railroad Co. in two letters from myself to Mr. W. Ernst, president of the Kentucky Central Railroad Co., of

250 prior date to this, upon being requested so to do by your company, and this right for the Kentucky Central Railroad Co. to work over our tracks upon the terms stated is hereby deemed to constitute a part of the consideration moving you to meet us at the Tennessee State line."

That communication was authorized by the board and made a part of the minutes.

36. From what have you just been reading?

A. As stated heretofore in my evidence, from the minutes of the meeting of the board of directors of the Louisville & Nashville Railroad Company held in New York December 22d, 1880.

37. What was it that you were reading?

A. I was reading a communication that the board authorized Mr. E. P. Alexander, vice-president, to make to the Knoxville & Ohio Railroad Co.

38. Was the Kentucky Central made acquainted with the fact that you had made that contract pretty soon after it was concluded?

A. I cannot state from my own personal knowledge that they were, but by subsequent action of the board of directors of the East Tennessee, Virginia & Georgia and the Knoxville Railroad
251 Co. at the State line, and they agreed to meet the Louisville and Nashville Railroad Co. and make this communication which I have just read a part of such agreement, and under that agreement the Louisville and Nashville constructed its road from Livingston to Jellico; the Knoxville & Ohio constructed its road from its then terminus to Jellico,—the State line, and the Kentucky Central Railroad Co. constructed its line from Richmond to a point of connection with the Louisville & Nashville, about three miles west of Livingston.

39. Was there any communication of any kind between your company and the Kentucky Central in reference to that East Tennessee, Virginia & Georgia road, or do you know whether the Kentucky Central desired you to execute that contract?

A. In November, 1883, the president, Mr. Cunningham, and the vice-president, Gen. Echols, of the Kentucky Central Railroad Co., called upon me in this office and demanded that a contract be formulated between the Louisville & Nashville Railroad Co. and the Kentucky Central Railroad Co. substantially in accordance with the letters of Gen. E. P. Alexander, dated Nov. 4th, 1880, and
252 Nov. 30, 1880, addressed to Wm. Ernst, pres't *president* of Central Kentucky road.

40. What action did you take?

A. In compliance with the demand thus made by the president and vice-president a contract was formulated and on December 11th forwarded by me to Mr. Cunningham, president of the Kentucky Central Railroad Co.

41. Was that contract executed?

A. I received a letter, signed C. H. Bronson, treasurer Kentucky Central Railroad Co., dated January 19th, 1884, stating that the draft of the contract forwarded by me on Dec. 11th to Mr. Cunningham, then president, was forwarded by him to Mr. C. P. Huntington, of New York, who has revised the proper agreement and enclosed me a copy of such revised contract.

42. File that letter as a part of your deposition.

A. I make the said letter a part of my deposition, marked Exhibit "H."

43. Was the contract sent by Huntington the same as signed, or were any changes made?

A. It was changed.

44. Did you then execute it, or what was further done with that contract?

A. I enclosed the contract with the alterations to C. H.
253 Bronson, treasurer of the Kentucky Central Railroad Co., under date of January 30th, 1884.

45. Did you approve or reject?

A. I took exceptions to some of it. I returned the contract, making certain exceptions. This revised contract seems to have been referred to C. W. Smith, general manager, who came to Louisville with still other changes, and we had personal negotiations over the different terms of the contract, which finally resulted in agreement between C. W. Smith, general manager of Central Kentucky Railroad Co., and myself, in which we were perfectly agreed. That was finally disposed of April 7th, 1884. In May, the following month, I was advised by Mr. Baldwin, president of the Louisville and Nashville railroad, that Mr. Huntington was trying to negotiate an agreement with him. On May 12th I had an interview with Mr. Huntington in New York, who proposed important modifications in the contract that had theretofore been negotiated between the general manager and myself. At his request I proposed an important modification of the agreement that had been negotiated thereto-
254 fore. From an original letter from Mr. Huntington, dated New York, July 9th, 1884, the contract seems to have been satisfactory to him. Said letter is as follows:

Kentucky Central Railroad Co., office of the president.

NEW YORK, *July 9th*, 1884.

Mr. M. H. Smith, pres't L. & N. R. R. Co., city.

DEAR SIR: I am in receipt of yours of yesterday, enclosing copies of contract for joint use of proportions of your Knoxville Branch.

Not knowing whether we will be ready to do business over it by August 1st, the date you have fixed therein, I have wired to Mr. C. W. Smith to advise me, and will in turn advise you as soon as I have heard from him.

I make said letter a part of my deposition, marked Exhibit "I." I have another letter, enclosing contract, which is as follows:

Kentucky Central Railroad Co., office of the president.

NEW YORK, *July 17th*, 1884.

Mr. M. H. Smith, pres't L. & N. R. R. Co., 52 Wall St., city.

DEAR SIR: Mr. C. W. Smith advises me that he will hardly be ready for business over the Knoxville Branch before September 1st, but hopes to anticipate that date and to provide for operations
255 under the agreement at the earliest day possible.

I have noted on the contract inclosed such modifications as would secure to both of us this privilege.

Mr. Smith has also enclosed to me a copy of his letters to you in

regard to mail compensations which had been overlooked, and I have added to the second section a clause dividing the earnings between Livingston and Jellico, equally between us.

As we pay one-half of the costs of the road and one-half of its maintenance, and will undoubtedly carry on our trains or deliver to your trains a very much larger mail from Cincinnati and the adjacent popular sections than is likely to be carried from Louisville, an equal division seemed to me to be about fair, but I want to do what you think is right about it.

There are some other slight changes merely elucidatory to which I think you will see no objection, and if satisfactory to you, as amended, I am ready to sign the agreement.

Yours truly, C. P. HUNTINGTON.

I make said letter a part of my deposition, marked Exhibit "K."

I have another letter from Mr. Huntington, dated August
256 5th, 1884, which is as follows:

Kentucky Central Railroad Co., office of the President.

NEW YORK, *August 5th*, 1884.

Mr. M. H. Smith, pres't L. & N. R. R. Co., Louisville, Ky.

DEAR SIR: Mr. Edgar sent over the Knoxville Branch contract you sent him, and I herewith enclose a copy incorporating the interlineations noted.

We have added only a clause entitling us to a reasonable compensation for carrying the local mails in event we should ever carry this mail on our trains, either at your solicitations or we are compelled to do so by the Post Office Department.

As this clause is reciprocated in allowing each party a reasonable compensation for mails carried in each others' behalf, I have taken it for granted that its incorporation would be equally acceptable to you, and in this view have sent an executed copy of the contract to Gen. Echols, V. P. of the company, requesting him to exchange it with you for the executed copy of your company.

Yours truly, C. P. HUNTINGTON, *V. P.*

I make said letter a part of my deposition, marked Exhibit "L."

257 46. Was the contract signed, as agreed upon, by Mr. Huntington?

A. Yes, sir.

47. How long were you negotiating—you and Mr. Huntington—from the time you commenced to the time that you drew your first contract and sent it to him before the final consummation of the contract?

A. The demand was made by the president and vice-president of the Kentucky Central railroad in November, 1883, and the first draft of the contract was sent to them on December 11th, 1883, and was finally executed August, 8th, 1884.

48. Was there or not any provision of the contract that was executed that was not discussed by the parties—that is, I mean, was it critically examined and discussed from beginning to end?

A. It was first drawn by Judge Houston and myself, you might say; was then sent, through the treasurer of the Kentucky Central, to Mr. Huntington, who revised it and returned it to me. I made certain other exceptions and changes and returned it the same way to Mr. Huntington. It was then turned over to C. W. Smith,
258 gen. manager of the Kentucky Central, who came to Louisville, and we discussed the matter fully and in all its bearings. It was then taken by him and turned over to Mr. Huntington, and in May Mr. Huntington, myself, and Mr. Baldwin again discussed it and agreed to still further important modifications, and after that there was continuous correspondence and other modifications until it was finally executed, and after it was executed it was still further amended by subsequent agreements.

49. What was the purpose of the Kentucky Central extending their road from Paris to near Lexington?

A. It was to form a through line for the purpose of conducting a transportation business for passengers and freight between Winchester, at the connection of the Chesapeake and Ohio from Cincinnati and all points on and reached by the Kentucky Central Railroad and connecting lines, and all points south of Jellico reached by the East Tennessee, Virginia and Georgia Railroad and connecting lines.

50. What connection, if any, had your contract with the East Virginia, Tennessee & Georgia Railroad with the demand
259 made by the president and vice-president of the Kentucky Central for the execution of a contract with them?

A. Their contract was based on our agreement with the East Tennessee, Virginia & Georgia, and the Knoxville and Ohio Railroads.

51. Do you mean to say that they were insisting on your making the contract in consequence of the contract you made with the other roads?

A. Yes, sir.

52. After the execution of this contract sued upon in this suit by the Louisville and Nashville Railroad Co., what facilities did you afford the Kentucky Central for traffic over that road between Livingston and Jellico, and what obstructions did you place in the way of their receiving the full benefit of the contract?

A. We furnished all the facilities required of us by the Kentucky Central railroad in strict conformity with the agreement. We placed no obstructions of any kind or character whatever in the way of the performance of the contract or of the Kentucky Central availing itself to the fullest extent of its rights under that contract.

53. To what extent did it avail itself of its rights under that contract?

260 A. It inaugurated through freight and passenger traffic—through sleeping cars; organized a fast freight line known as the Orange Fast Freight Line.

54. How long did they continue in that way to use the road?

A. Our records will show, but to the best of my knowledge it was until April 1st, 1885.

55. Did you or not put any obstruction at all of any kind in the way of their availing themselves of all the facilities provided for in this contract with them?

A. We did not; on the contrary, we did all that we could to facilitate the use of the road in the manner prescribed by the contract.

56. By the contract they were to pay you $60,000 a year—the interest on $1,000,000 for the cost of the construction and right of way of that road?

A. Yes, sir; less than one-half the cost.

57. Did or not the Kentucky Central pay any portion of that $60,000 a year?

A. Yes, sir; they made at least one payment.

58. Up to what time?

A. I cannot state of my own knowledge.

59. Did they ever pay, so far as you know, anything in the way of maintenance and repairs?

A. I cannot say positively.

261 60. When were you first notified by that company that they did not intend to adhere to the contract and intended to repudiate it as far as they could?

A. The first notice that I had of it was a communication dated Richmond, Va., March 11th, 1885, from C. W. Smith, general manager of the Kentucky Central Railroad Co.

61. Have you that original letter before you?

A. Yes, sir.

62. File that letter as part of your deposition.

A. I make it a part of my deposition, marked Exhibit "M."

63. What reason does he assign for repudiating the contract?

A. He says in effect: "Your company has not only sought to place every possible obstacle in our way to prevent us from securing and handling traffic legitimately belonging to us, but have also continued to largely carry said business to and from the E. T., V. & G. R. R. over your own road between Jellico and Cincinnati, including business to and from points beyond these terminal points, thus depriving this company of the power and ability to earn a sufficient amount to pay rental and other expenses stipulated in the

262 contract, or to meet interest on the cost of construction and maintenance of said extension from Paris to Livingston, thereby rendering null and void the operation and effect of the contract.

64. What arrangements had you made with the East Tennessee, Virginia and Georgia road which in any manner interfered with your obligations under that contract?

A. None whatever.

Q. What act do you know of that your company was guilty of or omission which interfered with the exercise of their rights in full under that contract?

A. I know of none.
66. Did you answer that letter?
A. Yes, sir.
67. What did you say in answer to that letter?
A.—

"*Contract with Kentucky Central. Joint Use of Knoxville Branch.*

MARCH 19TH, 1885.

C. W. Smith, Esq., general manager C., O. & S. W. R. R. Co., Richmond, Va.

DEAR SIR: I am in receipt of your favor of the 11th inst., stating that on and after the first prox. your company will not recognize or be governed by the provisions of the contract entered into between the Louisville and Nashville Railroad Co. and the Kentucky
263 Central Railroad Co. on the 8th day of August, 1884, for the joint use of our Knoxville Branch between Livingston and Jellico.

I am not aware that this company has taken any "unexpected arbitrary action" or any "arbitrary action," expected or unexpected, which has deprived your company of the revenue and benefit which it had a right to expect under said contract. This charge is vague, and I deem it due to the parties, the subject, and especially to the Louisville and Nashville Railroad Co., that you make it explicit, which I respectfully ask you to do, by stating in what manner the arbitrary action alleged by you has been exercised. The Louisville and Nashville Railroad Co. has not sought to place, nor has it in fact placed, any improper or unauthorized obstacles in the way to prevent the Kentucky Central Railway Co. from securing and handling traffic of any kind or character which it was entitled under the contract to secure or handle. It has carried on its business between Cincinnati and points reached via Cincinnati and points south of Jellico in connection with the East Tennessee, Virginia and
264 Georgia Railway Co., but there is nothing in the contract depriving it of such traffic, and it was always understood by both companies that it would continue to compete for traffic to to all points reached by its lines. The contract between these companies was discussed, considered, drawn, redrawn, and finally completed after the exercise of unusual care and deliberation by the parties, and in its completed condition it is, in all its essential features, the proposition originally submittod by E. P. Alexander, 2d vice-president, to Wm. Ernst, pres't, in his letters of November 18th and 30th, 1880, and there is no provision in it authorizing either party to pronounce it null and void because not profitable to it, nor so to declare it for any other reason. This contract provides the means for its own preservation and enforcement by a stipulation, mutually agreed to, that "should disagreement arise between the parties hereto as to any act or omission to act under this agreement, or as to the meaning of any provision hereof, the same shall be submitted to arbitration."

The companies, it would seem, disagree as to the acts of
265 the Louisville and Nashville, and possibly as to the meaning of some of the provisions of the contract, although I do not see how this can well be, and if we have a case for anything it is a case for arbitration and not for a forcible annulment or abrogation of the contract by either party.

This company proposes to adhere to and perform the contract on its part, and it confidently expects the same of your company, and it is ready to submit to arbitration any disagreements as to its acts or as to the meaning of any provision of the contract.

Yours, truly, M. H. SMITH, *President.*"

I make said letter part of my deposition, marked Exhibit "N."

68. Was there any understanding at any time, at the time of the execution of the contract sued upon or subsequent, between the Louisville & Nashville Railroad Co. and the Kentucky Central Railroad Co. that the Louisville & Nashville Railroad Co. was not to have full right to compete for all Southern traffic over your line, either to Cincinnati or to Louisville or any other point?

A. There was not.

69. After you received that notice of the repudiation of
266 that contract was there any further traffic done by the Kentucky Central over that part of your road from the 1st of April?

A. No; practically none.

70. Has the Kentucky Central recognized their obligations under that contract since that time, in any way?

A. They recognized it to this extent, that they appointed an arbitrator, as provided for in the agreement.

71. Had you any other contract with the Kentucky Central for the joint use of any portion of your road?

A. Yes, sir.

72 What portion was that?

A. About three miles between what was known as the sinks and Livingston—west of Livingston.

73. When was that contract made with the Kentucky Central?

A. It was made in 1882.

74. Have you that contract?

A. I have a copy; the original in on file with the secretary.

75. Will you file a copy of that contract as a part of your deposition?

A. Yes, sir.

Said copy is filed here and made a part of my deposition, marked Exhibit "O."

76. By it what were they to pay you for the use of that
267 road—upon what terms were they to use it?

A. To pay us interest on one-half of the agreed value of the road jointly used, or seven per cent. per annum on one-half of the value and pay one-half of the cost of maintenance, and other conditions.

77. When was that contract entered into?
A. August 18th, 1882.
78. You say that is west of Livingston?
A. Yes, sir.
79. Does the Kentucky Central have to go over that to reach Livingston?
A. Yes, sir.
80. Is that contract still in force?
A. Yes, sir.
81. Are they not paying rent on that?
A. Yes, sir.
82. Have they or not ever repudiated that contract?
A. No, sir.
83. When they repudiated the contract sued upon and the difficulty arose between you, did either party propose arbitration; if so, which one?
A. The Louisville and Nashville Railroad Co. proposed it in a communication dated June 5th, 1885.
84. Did Mr. Huntington appoint an arbitrator?
A. Yes, sir.
85. When was he appointed?
268 A. He advised us by a communication dated New York, June 22, "That he had appointed Alfred A. Cohen."
86. Who did you appoint?
A. D. S. Gray, of Columbus, O.
87. Did the two ever appoint a third arbitrator?
A. They did not.
87½. Why did they not?
A. They were unable to agree upon a third party.
88. How long did they continue trying to agree or disagree?
A. The representative of the Louisville and Nashville Railroad Co. notified us and gave it up some time in Nov.
89. Why did he give it up; what seemed to be the difference between them?

(Objected to by counsel for the Kentucky Central Railroad Company.)

A. They failed to agree because the representative of the Kentucky Central Railroad Co. was determined that he would not agree to any arbitration. It was several weeks before he would give his attention to it or consider the matter at all. He then requested the representative of the Louisville & Nashville Railroad Company to suggest the names of several parties that would be satisfactory to the rep-
269 resentative of the Louisville and Nashville Railroad Co. He named Hon. J. D. Cox, Cincinnati, Ohio; Hon. Thos. M. Cooley, Ann Harbor, Mich.; H. B. Ledyard, pres't Michigan Cent. railroad, Detroit, Mich.; E. B. Thomas, gen. manager Bee Line, Cleveland, Ohio; Adna Anderson, chief engineer Northern Pacific railroad; Hon. H. J. Jewett, New York.
90. Did Mr. Cohen, the arbitrator chosen by the Kentucky Central, object to either of those men?

A. Yes, sir; he said that most all of them were persons employed in active business.

91. Did he object to their qualification or fitness?

A. No, sir; but they were busy men, &c.

92. Do you know what relation Mr. Cohen sustains to Mr. Huntington, the president of the road?

A. I cannot answer that from my own knowledge.

LOUISVILLE, KY., *April 30th*, 1887.

Met pursuant to adjournment, counsel on both sides being present, and the further taking of depositions in this behalf was continued as follows:

270 The deposition of C. W. Bradshaw, taken at the place mentioned in the caption, at the time above stated, and in the same behalf.

The said witness, being first duly sworn by me and examined by Judge NOBLE, deposed as follows:

1. I show you a map of the line of the Kentucky Central Railroad Co. from Covington to Sinks of the Knoxville Branch, from Lebanon Junction to Sinks, from Sinks to Livingston, and from Livingston to Jellico, there connecting with the East Tennessee, Virginia and Georgia road; also showing the *the* Richmond Branch from Richmond to Stanford. I will ask you who prepared that map.

A. I prepared the map.

2. From what?

A. That map is a tracing of a portion of a map made by the State geological survey, the edition of 1887.

3. Is it or not an accurate copy of the map of the geological survey of that date?

A. Yes, sir; it is an accurate copy.

4. File it and make it a part of your deposition.

A. I file it and make it a part of my deposition, marked Exhibit "Q."

Counsel for the Kentucky Central declined to cross-examine.

271 LOUISVILLE, KY., *May 3d*, 1887—3 o'clock p. m.

Met pursuant to the adjournment, counsel on both sides being present.

The deposition of H. W. Bruce, taken at the place mentioned in the caption, at the time stated above, and in the same behalf.

The said witness, being first duly sworn by me and examined by Judge NOBLE, deposed as follows:

1. Please state your place of residence and occupation, and how long you have been thus engaged.

A. Louisville, Ky.; assistant chief attorney of the Louisville and and Nashville Railroad Co. I have been such since the 10th of March, 1880.

2. State, if you please, what you know, if anything, of the original contract between the Louisville & Nashville Railroad Co. and the Kentucky Central Railroad Co. in reference to traffic rights of the Kentucky Central over the Louisville and Nashville from Livingston to Jellico.

A. I have been familiar with the contract ever since its execution by the two companies. I have often seen it and have often read it.

272 3. Do you recollect how it was executed?

A. My recollection is that it was executed by the two companies, in the usual manner in which said contracts are executed, signed by the executive officers of the respective companies, with the respective corporate seals attached to it.

4. When did you last see that original contract?

A. My recollection is that the last time that I saw it was about the time of the commencement of a suit by the Louisville and Nashville railroad against the Kentucky Central Railroad Co. in the Louisville law and equity court.

5. Do you recollect about what time that was?

A. I think it was some time in the latter part of the year 1885.

6. In whose possession was that contract the last time you saw it, and what became of it?

A. My recollection is that the last time that I saw that contract I handed it to Judge L. H. Noble, of the firm of Barnett, Noble & Barnett, for the purpose of being filed with the petition of

273 the Louisville & Nashville Railroad Co. in the case referred to against the Kentucky Central Railroad Co.

7. Do you know whether in fact such a suit was brought?

A. I have never examined the records of the law and *and* equity court, but we have such a case on the docket of this office, in which the Louisville and Nashville Railroad Co. is a party.

8. By whom was that suit brought, if brought at all?

A. By the Louisville & Nashville Railroad Co.'s local attorneys, Barnett, Noble & Barnett. I know they were instructed to bring such an action, and they reported that the action had been brought in the usual manner, and had frequent conference about the time that it was brought and after it was brought.

9. State whether or not you ever read the petition filed in that suit.

A. My recollection is that I read the petition and consulted with Judge Noble about the form of the petition and the allegations of it.

10. Have you any knowledge where that original contract is now?

274 A. I have none whatever. I have no recellection of seeing it since I handed it to Judge Noble. This office keeps in its law department a file of all cases to which the company is a party. There is in that department a file of the case *of the case* of the Louisville & Nashville Railroad Co. against the Kentucky Central Railroad Co. in the Louisville law and equity court, and in that file I find a memorandum, in the handwriting of one of the clerks of the

law department, stating that I handed the contract referred to to Judge Noble on the 29th of December, 1885.

11. I will get you to examine the paper filed in this suit, purporting to be a copy of the contract about which you have testified, marked Exhibit "A," and state whether or not, in your judgment, it is a correct copy of the original contract.

A. In my judgment, it is a correct copy of the original contract, except the seals of the corporation.

12. I find, in what purports to be a copy of that contract, appended to it what purports to be a resolution of the Kentucky Central
275 Railroad Co. ratifying that contract, signed R. A. Jones, sectary, and dated December 23d, 1884.

13. State, if you please, whether or not such a resolution was appended to the original contract.

A. I believe such a resolution was appended to the original contract.

Also the deposition of THOS. W. BULLITT, taken at the same time and place and in the same behalf.

The said witness, being first duly sworn by me and examined by Judge NOBLE for the plaintiff, deposed as follows:

1. State your name, age, residence, and occupation.

A. My name is Thos. W. Bullitt; I am of lawful age; reside in Louisville, Ky.; occupation, lawyer.

2. State what connection you have, as an attorney or otherwise, with this suit.

A. I am representing the Kentucky Central railroad as attorney.

3. State what you know, if anything, about the original contract between the Kentucky Central and Louisville and Nashville Railroad Companies in regard to running trains over the road between Livingston and Jellico.

276 A. There was a suit by the Louisville and Nashville Railroad Co. against the Kentucky Central R. R. Co., brought about January 1st, 1886, in the Louisville law and equity court. I examined that suit as counsel for the Kentucky Central railroad and filed an answer in it. In that suit was a *proper* purporting to be the original of the contract between the Kentucky Central railroad and the Louisville & *and* Nashville railroad, a copy of which paper is on file in this suit now pending; that paper I supposed to be and it was treated by all the parties, as far as I am aware, as being the original of the contract, and I supposed that it was the orginal. The papers in that case were withdrawn from time to time by counsel upon either side for examination. I had them myself at one time. I do not think I have them now. I have not been able to find them, and I believe that the papers have been temporarily lost, and that that original is temporarily lost with those papers.

4. Have you examined to see whether you have it or not?

277 A. I have examined and have not been able to find it, and do not believe that I have it.

5. Have you inquired at the clerk's office to know whether it is to be had there or not?

A. The papers cannot be found in the clerk's office.

Also the deposition of JOHN H. PAGE, taken at the same time and place and in the same behalf.

The said witness, being first duly sworn by me and examined by Judge NOBLE, deposed as follows:

1. State your name, age, residence, and occupation.

A. John H. Page; age, twenty-one; deputy clerk of the circuit court and law and equity courts, Jefferson county, Kentucky.

2. State what your duties are as deputy clerk of the law and equity court?

A. I have charge of the papers and take the minutes and record the proceedings of the court.

3. State whether or not any suit has been filed in this law and equity court by the Louisville & Nashville Railroad Co. against the Kentucky Central Railroad Co.

A. Yes, sir.

4. Who brought that suit—what attorneys?

278 A. Barnett, Noble and Barnett.

5. When was that suit filed?

A. On the 31st of December, 1885.

6. Do you know whether any civil suit was filed in that suit between the parties?

A. I know there was some exhibits filed; I don't know what they were.

7. Where are the papers in that suit?

A. They are lost or mislaid.

8. How long have they been lost or mislaid?

A. I do not know, but I have not seen the papers for three or four months.

9. State whether or not you made any search for them; and, if so, how extensive a se-rch.

A. Yes, sir; I have made inquiry and se-rch myself, and have caused others to do so.

10. Have you been able to find them or not?

A. I have not.

11. Do you know where they are?

A. I do not.

12. Are they or not in the clerk's office, so far as you know and believe?

A. If they are in the office I cannot find them.

13. Who filed the suit; what attorneys brought it to the office and filed it?

A. I don't remember.

279 Also the deposition of L. H. NOBLE, taken at the same time and place and in the same behalf.

The said witness, being first duly sworn by me, deposed as follows:

I am one of the firm of Barnett, Noble and Barnett, attorneys, Louisville, Ky. As a member of that firm, about the 28th or 29th of December, 1885, I obtained from Judge Bruce, assistant chief attorney of the Louisville & Nashville Railroad Co., at his office, the original contract, a copy of which is filed in this case, for the purpose, by his direction and that of Judge Huston, chief attorney, of bringing a suit on that contract for the company against the Kentucky Central Railroad Co. in the Louisville law and equity court. Some two or three days subsequent to that time I prepared that suit, took it to the office of the Louisville & Nashville Railroad Co., read it to Judge Huston and to Judge Bruce. We conferred about it, and then I filed it in the Louisville law and equity court with that original contract.

I do not distinctly recollect, but my impression is pretty clear that that contract not only had the signatures of the officers of the
280 respective companies, but the seals of each one of those companies attached.

I took that suit out of the clerk's office one or more times for examination—once to prepare this suit and once to prepare a reply in that suit. Col. Bullitt, who represented the Kentucky Central railroad, had it out once or more at his office.

I think that I returned the papers to the office, and all that I can say is that I have thoroughly searched our vault, where we keep our papers, and had our clerk to search there, and we have not been able to find the papers, and they are lost, so far as my information goes, and I know not where they are. Before filing that original contract in the above-mentioned suit I had a copy prepared, which I examined and found to be a true copy of the original, and that copy is the one that is filed in this suit, marked "A."

(The further taking of depositions in this behalf was thereupon adjourned until May 4th, 1887. At — on both sides being present.)*

This erasure made by the clerk.

JOS. C. FINNELL, *Clerk.*

281 The deposition of THOS. C. BELL, taken at the time above stated, at the same place, and in the same behalf, counsel on both sides being present, the said witness being first duly sworn by me and examined by Judge NOBLE as follows:

1. Please state your age, residence, and occupation.

A. I am forty-eight; residence, Harrodsburg, Ky., but I am living in the city of Louisville at present. I am a lawyer by profession.

Q. State, if you know, about what time the extension of the Kentucky Central railroad from Lexington or Paris to Livingston was commenced or completed.

* Matter enclosed in parentheses erased in original.

A. I don't know what time it was commenced, nor do I know personally what time it was completed, except as I gathered from some of the contractors on the railroad and the officers of the company in talking about matters that I had to attend to for certain contractors.

3. What did you learn in reference to either of those points from the officers of the company.

282 A. I don't recollect that I learned anything in reference to the time that it was begun. The graduation and masonry upon that part of the road from Livingston to Richmond, at what is called Roundstone, was concluded about the 10th of December, 1883, or rather, that was the date of the final estimate.

4. Do you know any of the contractors that had contracts for the construction of any portion of that road?

A. Yes, sir.

5. Who were they?

A. Well, M. Tabler, of Harrodsburg, was one contractor; Rosser & Dickey, of Harrodsburg, Ky., was another contractor, and Robert Bibb, of Kinney station, Lincoln county, was another contractor, and some others.

6. What part of the road was constructed, in whole or in part, by those contractors whose names you have mentioned?

A. I think that those contractors whose names I have mentioned worked upon that part of the road from Richmond to Livingston—different sections of the road.

7. Do you know about what time they engaged in the execution of their contracts and when they completed them?

283 A. I think that in a conversation that I had with Mr. Lumm, the chief engineer of the road, at Winchester, Ky., in the presence of M. Tabler and of Rosser, of the firm of Rosser & Dickey, he said that the work of those two contractors had begun immediately after their written contracts, which were then present, and one of which said contracts I have now present, in the fall of 1882, and completed in the fall of 1883.

8. Do you know the amounts which Tabler and Rosser & Dickey and Bibb were to receive for the work they did, about?

A. The total sum is indefinite in my mind. The only thing that I had to do with was the amount of balance due them at the completion of their respective contracts.

9. At the completion of those respective contracts do you know whether the company paid them what they claimed to be due them?

A. Not at the time of completion, they did not.

10. What was done with the claims; what effort did they make to obtain their payment? And, if they did obtain payment, state by and through whom and the amounts.

A. Some time about the first of March; from the first to
284 the middle of, I will say, 1884. Mr. Tabler and Mr. Rosser, of the firm of Rosser & Dickey, & Mr. Bibb came to my office, in Harrodsburg, and desired me to collect the unpaid balance from the Kentucky Central railroad that they claimed to be due them on their respective contracts, and exhibited to me the final estimates that had been made by M. L. Lumm, the chief engineer of the road.

addititional sums that we were claiming over and above a final estimate that he would recommend a settlement upon that basis. I wrote out a proposition of compromise upon that basis, copies of which I retained, copied by Lumm's clerk, the originals being written by me. He sent them to Mr. Huntington, as I understood
290 from him, to New York, with his endorsement recommending a compromise upon that basis, and my recollection is that as the ten days were about out and there seemed to be a disposition to adjust the matters with the company that I gave an additional twenty days in which to settle.

Before the twenty days ran out I was notified by telegram from Gen. Echols to meet him in Louisville, at the Galt House, in reference to these matters, which I did, on the Saturday before the fourth Monday in April, 1884, and he wanted to make some other proposition of compromise with reference to it. I told him that I would not hear any; that what I had written to Mr. Huntington or submitted to Mr. Huntington, at Winchester, through Lumm, was a finality; that either they could pay upon that basis or else I would bring the suit to enforce the liens under the 8th section of the amended charter of March, 1871. Gen. Echols wanted me to go to New York to see Mr. Huntington. I told him that I would not, except upon the distinct understanding that my claims were to be settled upon
291 the basis of my offer of the 8th of April, through Lumm, at Winchester, and, at Gen. Echols' suggestion, I wrote a letter, I think, addressed to Gen. Echols, though I would not be positive about that, in which I reviewed the matter in hand and stated distinctly the lien that I claimed, and gave authorities, in addition to the act itself, upon which I based it, and said if they wanted a settlement upon that basis and would give me a ticket over their road that I would meet Mr. Huntington in New York, but with the distinct understanding that it was to be a settlement upon the basis of the proposition.

About Thursday of the following week I was notified to go to New York, and received at the same time a pass over the C. & O. road for myself and Dr. Tabler, and on Saturday evening following we started for New York and landed there on Monday morning, telegraphing to Rosser, who was then in Pennsylvania, to meet us in New York. We all got together and met Mr. Huntington in New York upon the following Monday.

After we met him there was some conversation, in which
292 Mr. Huntington proposed another basis of compromise. I emphatically declined anything and everything but that that I had submitted through Mr. Lumm. Finally he agreed to settle by paying one-third of the offer of compromise, through Lumm, in cash and the balance in six and twelve months, with four per cent. int.

After talking we agreed to accept that proposition, provided the company would agree, together with the trustees of the mortgage bonds, that any extension of the time of payment was in nowise to release our lien, if any, we had under the act of March 20th, 1871, or any other lien that we might have under the laws of Kentucky.

It was so agreed that the contracts — written out, a duplicate of which contracts was retained by Huntington, and one delivered to Rosser and Dickey and one to Tabler.

21. Have you one of those contracts?

A. No, sir; I have not.

22. Was or not the money paid that they agreed to pay?

A. Yes, sir; it was all paid; paid at the very day that they agreed to pay.

23. The time was extended for how long for the two-thirds?

A. As I said, my recollection is that one-third of the amount
293 that I offered as a compromise at Winchester of each claim was paid cash, one-third in six months and one-third in twelve months, with four per cent. interest on the deferred payments.

24. Were those payments made?

A. They were. In that connection I will state this, that we would not agree to a settlement with any postponement of the payment of any portion of the claims unless the trustees under the mortgage—the six-million mortgage—also signed this agreement, agreeing that the extension should in nowise release the liens we were claiming, if any we had.

25. Those were the trustees under the six-million mortgage?

A. Yes, sir; Bliss & Gates.

26. Did they agree to it?

A. Yes, sir.

27. Who was present in your conference in New York? You spoke of yourself and Rosser and Tabler.

A. I know that the attorney of the road, or rather the attorney of Mr. Huntington—I don't know whether he was the attorney of the road or not—Smith M. Weed, was present and dictated these contracts that I have spoken of with reference to the extension of
294 time not releasing any lien that we had, and either Mr. Bliss or Gates—I don't know which one of them, but I am rather inclined to think it was Gates—was present a part of the time, together with the stenographer who took down the matter, whose name I did not learn, and Tabler and Rosser. While the contract was being drawn Mr. Huntington was not in the room, but in an adjoining room.

28. Was anything or not said by you or anybody else about a lien under the act of the 20th of March, 1871, on that occasion?

A. Yes, sir; it was, distinctly, to Mr. Huntington, and it was spoken of in Weed's presence, and, if my recollection serves me right, I think that that contract that the company and trustees gave shows that Rosser & Dickey and Tabler claimed the lien under the act of March 20th, 1871. I think the expression was under the act of March 20th, 1871, or any other lien that they might have under the laws of Kentucky. Whether that is in the contract or not, I know that that matter was spoken of in the presence of Mr. Huntington and Mr. Weed.

29. Are you positive of the name of the attorney of Mr.
295 Huntington who was present on that occasion?

A. Well, I would not like to say absolutely that I am cer-

tain of his name, but I understood and have always understood that it was Smith M. Weed.

30. Do you know whether Mr. Weed and Mr. Huntington had investigated the question of the lien under the act of March 20th, 1871?

A. No, sir; I don't know positively that they had.

31. Had they the charter then?

A. Yes, sir; I saw it in the railroad office; not only the charter, but also the authorities to which I had referred in my letter that I had written at Louisville.

32. How did you happen to see those authorities? In what form did you see them?

A. I saw that they were simply open in the book-case, and I took them up and looked at them, and saw that the places that I had cited were turned down or dog-eared.

33. In regard to the act as well as the others?

A. Yes, sir; I remember that Jones on Railroad Securities was one that I had referred to several sections in, and I remember
296 that that was in the office, and that those sections were marked

34. Do you recollect whether or not Mr. Huntington at any of your interviews said anything about the company not accepting the amended charter of March 20th, 1871?

A. There was no intimation from Mr. Huntington or any one else in my presence in any of the interviews that I had in reference to this matter that the road would not accept or that they had not accepted the amended charter of March 20th, 1871.

35. The trustees who was present—whether Bliss or Gates, you don't recollect—did he say anything or not about the road being constructed under that act?

A. No, sir. He said nothing about it; and I would state in this connection that I don't know that the trustee was personally present at any discussion between Mr. Huntington and myself or between his attorney and myself in reference to the lien claimed, though I know that he was in and out several times.

36. Did or not Mr. Huntington in any of these interviews with him tell you that you had no lien under the 8th section of
297 the act of *of* March 20th, 1871?

A. He neither admitted that we had a lien or denied that we had.

The Kentucky Central Railroad Co., by Thos. W. Bullitt, its counsel, objected to each and every one of the above questions as they were put and the answers thereto upon the ground that the same are incompetent and irrelevant, and it was agreed between counsel for the Kentucky Central Railroad Co. and counsel for the Louisville & Nashville Railroad Co. that these exceptions might be noted at the end of the deposition, to have the same effect as if the exceptions were repeated at the foot of each question and answer.

Without waiving any of said objections heretofore taken as to the competency or *revalency* of the foregoing testimony, but insisting

upon the same, the Kentucky Central railroad, by counsel, cross-examines as follows:

Cross-examination by Col. BULLITT:

37. As I understood you, in your interviews with Mr. Huntington he simply waived any discussion on the subject as to whether
298 a lien existed or not, neither affirming nor denying it?

A. Yes, sir.

38. Declining to enter into any discussion on that subject?

A. I don't know that he declined to enter on any, but he did not enter on any; he just said, conceding that there is a lien, it is better to settle these matters without litigation.

39. Did Mr. Huntington not say that it was better to settle these matters without litigation, whether there was or was not a lien?

A. I don't know whether he did or not; it is likely that he did say that.

40. You didn't understand Mr. Huntington in making the settlement to concede that there was a lien?

A. I had no understanding with him about it one way or the other; all that I wanted was the settlement and payment of the money; I have stated fully what I said about it and what he said.

41. Are you accurate in the use of language that Mr. Huntington said, conceding that there was a lien, it should be settled without litigation, or is it not a fact that Mr. Huntington simply said that, whether there was or was not a lien, it was better that they should be settled without litigation?

299 A. He didn't say that they should be, in the interview that I had at Lexington, but that it was better that they should be settled without litigation. I would not state that I have given his exact form of expression at all; that is not the impression that I intended to make at all; but the idea that I got from him was that supposing that was correct in my views of the law, nevertheless it was better for us and for the company to have an adjustment of these matters without litigation at all.

42. Without an assertion of a lien?

A. Yes, sir.

Q. Did Mr. Huntington dispute, in any sense, the obligation of the company or the intention of the company to pay these claims in so far as the final estimate showed that they were due, whether a lien existed or not?

A. Well, he didn't dispute that they ought to be paid, but that the company was unable to pay; and the impression was made upon my mind that we could not get the whole amount in money, and that was the reason why he made the offer to take so much money; I don't recollect how much that was, but I think it was fifty
300 per cent., but I would not be certain about it, and the balance in stock of the road, which we declined.

44. Did Mr. Huntington or any of the officers of this road in any of their interviews with you concede that there was a lien upon the rolling stock of the road?

A. Not in express terms.

45. Well, did they in any form concede that such a lien existed?

A. Well, I have stated the facts and I leave that as a question of inference for the judge. I don't know whether that would be considered so or not.

46. I mean to inquire whether you understood from those gentlemen that they did concede that a lien existed; whether that was your understanding from them?

A. As I stated to you before, not in express terms, but I certainly did have the idea in my mind that they conceded a lien, else from what had taken place between me and Mr. Huntington at Lexington they would not have settled.

47. What did any of them say to you from which you inferred that they conceded a lien?

A. Nothing further than what I have stated heretofore. I have given about the whole statement of *every* everything that occurred between us.

301 48. I believe you have not stated that Mr. Bliss or Mr. Gates, trustees of the mortgage, or any bondholder ever conceded to you the existence of the lien, have you, directly or indirectly?

A. Well, Mr. Bliss and Gates signed the agreement of which I have spoken, in which the assertion of the lien was stated and that the postponement of payment was not at all to interfere with that lien. Mr. Huntington, as I gathered in the conversations with the officers of the road in some way, whether directly from Mr. Huntington I don't recollect, — that he was the owner of bonds to the extent of $3,200,000.

49. Mr. Huntington so told you?

A. I said that I either gathered it from him or from some of the officers of the road; I would not be certain whether from Mr. Huntington or not.

50. You don't remember who it was that told you that?

A. I know that the auditor of the road, on the 24th of March, told me that the bonds were principally owned by Mr. Huntington and Mr. Bliss and Mr. Gates, I think, with the exception of about five or six hundred thousand dollars that was owned by Mr. Harper and some others in Cincinnati; that the balance was

302 owned by Huntington, Bliss, and Gates, with the exception of about six hundred dollars that was then unsold and still in the possession of the company.

51. Your information was derived from the auditor whom you met at Lexington?

A. No, sir; at Covington. If you will allow me, the reason why I am not positive whether Mr. Huntington told me or not, I think, in one of the interviews that I had with Mr. Huntington I intimated to him that he could not afford to stand a suit in reference to these matters, inasmuch as he was the owner of over three million of these bonds, because, if such a suit as that was filed, there would be immediately such a shrinkage in the value of the bonds by reason of the suit that they could afford to pay the claims off without anything of the kind. Whether Mr. Huntington acknowl-

edged that he was the owner of any bonds or not I am not distinct in my mind.

THOS. C. BELL.

The further taking of depositions in this behalf was thereupon adjourned until to-morrow, May 6th, 1887, at 3 o'clock p. m.

303 LOUISVILLE, KY., *May* 6, 1887—3 o'clock p. m.

Met pursuant to the adjournment, and the further taking of depositions in this behalf was continued as follows, counsel on both sides being present:

The deposition of HENRY C. MURRILL, taken in the same behalf at the time last above mentioned and at the same place mentioned in the caption.

The said witness, being first duly sworn by me and examined by Judge NOBLE, deposed as follows:

1. State your name, age, residence, & occupation.

A. Name, H. C. Murrill; age, fifty-five; residence, Louisville, Ky.; occupation, wholesale grocer.

2. State whether or not you are acquainted with William Ernst, of Covington, Ky., who was formerly at one time president of the Kentucky Railroad Co.?

A. I am not acquainted with him personally.

3. Are you acquainted with his handwriting?

A. I have seen it; yes, sir.

4. In what way did you become acquainted with his handwriting?

A. From my connection with the branch of the Northern
304 Bank of Kentucky, in this city, as a director, and also as a member of the directory of the Louisville & Nashville Railroad Co.

5. At what time was it that you held those two positions?

A. I was in the bank previous to 1873, dating back some years. I was a director in the Louisville and Nashville Railroad Co. and resigned in June, 1882.

6. How long had you been a director in the Louisville & Nashville Railroad Co.; how far back did your position in that company extend?

A. Some eight or nine years.

7. State whether or not it was by virtue of your relations as a director of that bank and in that railroad company that you became acquainted with the signature of Mr. Ernst.

A. It was through my connection with those two institutions that I became acquainted with his signature.

8. In what way?

A. Seeing his letters to the bank and to the railroad.

9. Did you see many of them?

A. A good many of them with the bank.

9½. Do you know whether they were or not acted upon by the bank as the genuine signatures of Mr. Ernst?

A. Yes, sir.

305 10. Were they or not in reference to business with the bank?

A. Yes, sir.

11. I will show you now a letter purporting to be written and signed by Wm. Ernst, dated Covington, October 20th, 1880, and addressed to E. P. Alexander, second vice-president L. & N. R. R. Co., and filed as an exhibit with Mr. Smith's deposition in this case as Exhibit No. "D." State whether or not that signature of Wm. Ernst is or not his genuine signature.

A. It is, to the best of my knowledge.

12. Have you any doubt about it?

A. From what I have seen of Mr. Ernst's writing I don't think there is any doubt about it.

13. Have you or not ever seen that letter before?

A. Yes, sir.

14. When?

A. Shortly after its receipt it was shown me by Gen. Alexander.

15. Were you or not director in the Louisville & Nashville Railroad Co. at that time?

A. I was.

16. Do you know whether that letter was acted upon by Gen. Alexander as a genuine letter of Mr. Ernst?

A. Yes, sir; he said it was, and acted upon it as such.

306 Also the deposition of JOHN CULP, taken at the same time and place and in the same behalf.

The said witness, being first duly sworn by me and examined by Judge NOBLE, deposed as follows:

1. Please state your name, age, and residence and occupation.

A. John M. Culp; age, thirty-eight; Louisville, Ky.; general freight agent of the Louisville and Nashville Railroad Co.

2. How long have you been such freight agent?

A. Between six and seven years.

3. Who regulates and fixes *who regulates and fixes* the tariff rates for freight and passengers over the different lines of the Louisville and Nashville system?

A. I do, subject to the approval of the vice-president and aided by assistants over different portions of the line.

4. Are any changes or modifications of any kind made in these rates without your knowledge?

A. They are all made subject to my approval. All changes of moment are brought to my attention either before they are made or immediately afterwards. There might be minor changes made which would not be brought directly to my attention, but they would
307 all be made under some general rule or system of making such charges.

5. Where does the Louisville & Nashville railroad, extending from Louisville to Cincinnati, called the Short Line, connect with the Kentucky Central?

A. It crosses the Kentucky Central at Milldale.

6. Where is Milldale?

A. Five miles southwest of Cincinnati. It crosses nearly at right angles the Kentucky Central railroad.

7. Is that the termination of the Kentucky Central, where you cross it?

A. No, sir; its terminus is Covington.

8. How far from *from* the crossing of your road?

A. Something over a mile.

9. Has it a depot there?

A. I understand so.

10. How far is it from the depot of the Kentucky Central in Covington — Cincinnati?

A. I cannot tell the exact distance, but I should say less than a mile.

11. Has the Kentucky Central or not always shipped their freight into Cincinnati over your line?

A. Prior to the latter part of 1881 it did not, to my knowledge, ship freight into Cincinnati over the Louisville & Nashville railroad, except going over the P., C. & St. L. railway.

308 12. Do you know which road was constructed first—the Kentucky Central to Covington or the Short Line to Cincinnati?

A. The Kentucky Central.

13. How did they get their freight into Cincinnati and from Cincinnati from the Kentucky Central before that?

A. I presume they got it as they did from the time when I first knew anything about it up to the latter part of 1881—that is to say, by wagons and the bridge across the Ohio river.

14. How many years was that?

A. I first knew about in a general way—not directly—four or five years, perhaps.

15. During that time you say they transferred their freight from their depot in Covington to Cincinnati by wagons?

A. Yes, sir; going into Cincinnati, so far as I know—Cincinnati proper.

16. Is there any reason why they could not transfer it now in the same way if they desired to do so?

A. There is none that I know of.

17. Do you know of the contract between the Louisville & Nashville Railroad Co. and the Kentucky Central Railroad Co., which is set up in this suit, by which the Kentucky Central has the right to the joint occupancy of the Knoxville Branch, from Livingston to Jellico, for twenty-five years?

309 A. Yes, sir.

18. Do you remember when the Kentucky Central completed its extension from Lexington to Livingston?

A. In August or September, 1884, I think.

19. Prior to that time had there or not been any understanding or agreement between the Louisville and Nashville Railroad Co. and the Kentucky Central Railroad Co. that the freights over the

Louisville and Nashville railroad from Milldale into Cincinnati for the Kentucky Central or from Cincinnati over the Louisville and Nashville railroad to Milldale should be at any particular rate?

A. Yes, sir; there had been a contract made for a reduced price between Cincinnati and Milldale in both directions on all traffic to and from points on the Kentucky Central railroad, which was at the time of the making of this reduced price completed to Lexington, and on traffic to and from points on the Chesapeake and Ohio railroad. There never was any contract for anything less than the regular tariff rates on the Louisville & Nashville railroad between Milldale and Cincinnati on any traffic except that for local points
310 on the Kentucky Central Railroad and on the Chesapeake & Ohio railroad.

The arrangement for the reduced price excluded Lexington and local points on the Louisville and Nashville railroad west of Lexington specifically, and made those reduced rates apply to business only on the Kentucky Central railroad exclusive of Lexington and the points west on the Louisville & Nashville and the business on the Chesapeake and Ohio railroad.

20. I show you the deposition of Chas. L. Brown, taken in this case on behalf of the complainants. With it is filed what purports to be a contract with the Louisville & Nashville Railroad Company, the Louisville, Cincinnati and Lexington, and Pittsburgh, Cincinnati and St. Louis railway companies, dated July 18th, 1879; state whether or not that is the contract fixing the reduced rates of which you have spoken.

A. I believe this contract to be a copy of the original contract fixing the price from Milldale to Cincinnati on traffic over the Kentucky Central railroad destined to points reached by the P., C. & St. L. railway.

311 The arrangement for making a reduced price on traffic between Milldale and Cincinnati proper and on traffic to and from the Kentucky Central local stations was made by correspondents or perhaps conference between the vice-president of the Louisville and Nashville Railroad Co. and Mr. M. E. Ingalls, then president of the Kentucky Central railroad, in October, 1881.

21. Who was the vice-president of the Louisville and Nashville Railroad Co. at that time?

A. Gen. E. P. Alexander.

22. Do you know whether he at that time or about that time sent any telegram to the president of the Kentucky Central, Mr. Ingalls, in reference to future special rates to and from Cincinnati and Milldale?

A. He did.

23. Will you read that telegram?

A. The telegram is dated Louisville, Ky., Oct. 18th, 1881, and reads as follows:

"M. E. Ingalls, president, Cincinnati, Ohio:

I have examined papers and find that contract applies only to business going east over P., C. & St. L. I am willing, however, to

accept contract rate for business in both directions, except
312 business to and from Lexington proper and points on our Lexington Branch, which I think should be protected to this company.

(Signed) E. P. ALEXANDER, *V. P.*

24. Will you make a copy of that telegram a part of your deposition?

A. I do so, marked Exhibit No. "R."

25. Subsequent to that time was there any modification or lessening of the special rates given by your company to the Kentucky Central on freight to and from Milldale and Cincinnati?

A. On the 5 of November, 1881, the rates between Cincinnati and Milldale on traffic to and from local stations on the Kentucky Central were reduced as follows: On coal, lumber, stone, lime, salt, flour, grain, and similar freights, two cents per one hundred pounds.

26. How long did that reduced special rate to the Kentucky Central continue?

A. It is still in effect on traffic to which it is originally applied.

27. At the time Gen. Alexander as vice-president consented to a rate of two and a half cents per one hundred pounds to and from Milldale what competing points were there on the Kentucky Central with your road?

313 A. There was Lexington, immediately on the Kentucky Central railroad, and there was a local station on the Lexington Branch of the Louisville and Nashville railroad which could be reached by the Kentucky Central at Lexington.

28. Did those reduced rates to the Kentucky Central apply to freights shipped to and from Lexington?

A. They did not.

29. Were the rates to and from Lexington and beyond less or more, higher or lower?

A. The freights between Milldale and Cincinnati or traffic to and from Lexington were our regular schedule local rates between Cincinnati and Milldale.

30. At any time between the date of that letter or telegram from Vice-President Alexander and the present time has there been any change—any reduction—in the rates on freight between Milldale and Cincinnati and Cincinnati and Milldale when freights were coming to and from Lexington?

A. We have not charged at any time since that date less than our local tariff rates between Cincinnati and Milldale on business to and from Lexington and local points in our L., C. & L. Division
314 west of Lexington and via Lexington.

31. From the time that telegram was written up to the present time have you had any permanent agreement between your company and the Kentucky Central as to what should be for any given time the local or special rates?

A. No, sir; we have not.

32. What were your local rates from Milldale to Cincinnati and Cincinnati to Milldale at the time that telegram was written, in 1881?

A. First class, nine cent- per hundred pounds; second class, eight cents; third class, seven cents; fourth class, six cents; fifth class, in lots less than 24,000 pounds, six cents; fifth class, in lots of 24,000 and over, five cents; class A, the articles in which class are specified in the classification, three cents per hundred pounds; class B, three and a half cents per hundred pounds; class C, four cents per hundred pounds, and class D, four and a half cents per hundred pounds. These classes, A, B, C, and D, apply only to car-loads, which rates were adopted January 1st, 1880.

33. How long did that tariff rate continue?

A. Until January 1st, 1884.

315 34. Please state what the rates then were—the local tariff rates.

A. First class, nine cents per hundred pounds; second class, eight cents; third class, seven cents; fourth class, six cents; fifth class, in lots less than 24,000 pounds, five cents; fifth class, in lots of 24,000 pounds and over, four cents; grain, less than 24,000 pounds, five cents; grain, 24,000 pounds and over, four cents; salt, in car-loads of 24,000 pounds and over, three and one half cents; class A, three and a half cents; class B, four and a half cents; class C, five and a half cents. These classes, A, B, and C, to apply to car-load lots. Coal, in car-loads of not less than 24,000 pounds, three cents; horses, mules, and cattle, eight dollars per car; hogs, single deck, sheep, double deck, nine dollars per car; sheep, single deck, seven dollars per car.

35. Do I understand that these were the local tariff rates for freight over your road from Milldale to Cincinnati and Cincinnati to Milldale?

A. Yes, sir.

36. How long did that tariff rate continue?

A. This tariff of January 1st, 1884, is in effect at this time
316 and has been since January 1st, 1884.

37. How many changes have you made in your tariff rates since 1881?

A. Only one change.

38. Now, did I understand you or not to say that from 1881 on your tariff rates for freight to and from Lexington going to and from Lexington and from Milldale to Cincinnati and Cincinnati to Milldale agreed with those local rates?

A. They were according to the rates first read.

39. Mr. Brown in his deposition says that the Kentucky Central Railroad Co. were notified on the 17th of Oct., 1884, of certain advanced tariff rates on freight shipped over their road going from Cincinnati to and beyond Livingston or coming this way from Livingston to Cin.; state what those tariff rates that he was notified of were.

A. On the 17th of October, 1884, C. L. Brown, gen. freight agent of the Kentucky Central, was notified that commencing with the 20th inst. the Louisville & Nashville railroad would charge local rates between Cincinnati and Milldale on traffic over the Kentucky Central railroad destined to or organizing at Livingston, Ky.,

317 Stanford Junction, Ky., and points west of Livingston and points beyond Stanford, Ky., and Livingston, on the Knoxville Branch of the Louisville and Nashville railroad. These rates were those of January 1st, 1884, which I have named.

40. Have you or not ever fixed any rates for the shipment over your road to and from Milldale and Cincinnati on freights going to or coming from Livingston and points beyond higher than those local rates?

A. No, sir; we have not.

41. In what manner was Mr. Brown notified of the rates that would be in the future charged to and from Livingston?

A. By letter.

42. Will you file a copy of that letter and make it a part of your deposition?

A. I do so, marked Exhibit "S."

43. Why was not the Kentucky Central notified before October 17th of the rates that would be charged from Cin. to Milldale and from Milldale to Cincinnati on freight coming from Livingston or going to Livingston?

A. We had no knowledge, until a few days prior to October 17th, that the Kentucky Central railroad was securing freight for
318 Livingston and points beyond which they desired to send over our line from Cincinnati to Milldale, and as soon as we found out that the Kentucky Central railroad was securing freight which it expected to pass over our line from Cincinnati to Milldale a notice was sent that we would charge these rates on traffic to Livingston and beyond.

44. Were those the same or different from what they had been paying on shipments to Lexington?

A. They were the same.

45. Have you or not ever charged them any more than your local rates?

A. No, sir.

46. I will ask you whether or not the rates which you have spoken of as having given to the Kentucky Central from Milldale to Cincinnati and Cincinnati to Milldale when the shipments were for local points not so far south as Lexington over the Kentucky Central *whether* they were special reduced rates or regular rates of your company?

A. They were special reduced rates, barely more than the cost of handling the business; it is questionable whether it was even cost.

47. Can you state why those special reduced rates were not
319 extended to the company on freight that went to and from Lexington and beyond?

A. We had facilities for handling that freight. We could move that freight at a profit over our line, and if we should haul it at rates that would pay us no more than the cost of performing the actual service, and perhaps not as much as the cost, and hence we charged local rates just as we would have charged on any other traffic.

48. At what points do your two roads compete for business?

A. They compete at Cincinnati for traffic to Livingston and Stanford Junction and points South, and each compete northwardly between the same points for traffic coming from points south, brought to those points by our common connections.

49. Now, state whether or not these reduced rates extend to a part or all of the points on the Kentucky Central which were not competing points with your road.

A. They extended to all points that were not competing points with our road—that is to say, points that we did not reach, either directly with our own line or by our connections.

50. State whether or not the Louisville & Nashville Rail-
320 road Co. ever agreed with the Kentucky Central or gave it to understand that it would extend to it these reduced rates at any competing point.

A. The Louisville & Nashville Railroad Co. never did agree with the Kentucky Central to accept less than its regular tariff rates on traffic for competitive points. It never gave the Kentucky Central railroad any ground for belief that it would accept anything less than those local rates on traffic between Cincinnati and competitive points; but, on the contrary, the Kentucky Central railroad had, from correspondence with the Louisville and Nashville railroad, every reason for believing that it would not accept less than the local rates between Cincinnati and Milldale on traffic for competitive points.

51. What connection, if any, had the contract between the Kentucky Central and the Louisville and Nashville Railroad Company for the joint use of road between Livingston and Jellico with the rates which you should charge the Kentucky Central between Cincinnati and Milldale and Milldale and Cin.?

A. Not the slightest.

52. At any time previous to the completion of the Ken-
321 tucky Central to Livingston did the Louisville and Nashville Railroad Company or not make any agreement with the Kentucky Central or have any understanding with it by which rates were to be lessened below the local tariff for freight going to or coming from points beyond Livingston between Cincinnati and Milldale?

A. It did not.

53. State whether the Louisville and Nashville railroad has ever changed its special reduced rates between Milldale and Cincinnati and Cincinnati and Milldale or its local tariff rates between those points since Gen. Alexander's letter in 1881, except the change made in January 1st, 1884?

A. It has not.

54. Have you noticed the rates given by Mr. Brown in his deposition?

A. Yes, sir; I have seen them.

55. What is the difference, if any, between the charges for the different classes of freight given by him in that deposition and those given by you as the reduced special rates?

A. The rates which he gives are the same as the special reduced rates between Cincinnati and Milldale on traffic for local points on the Kentucky Central railroad.

322 56. He speaks of his having shipped for the Kentucky Central from Cincinnati to Milldale and then over his road beyond Livingston at the reduced special rates after September 1st, 1884. State what you know about it.

A. No less than the local tariff rates of the Louisville & Nashville Railroad Company between Milldale and Cincinnati were authorized by the Louisville & Nashville Railroad Co. If any traffic from Cincinnati to Livingston or points south was carried over the Louisville and Nashville railroad from Cincinnati to Milldale at a reduced rate it was an error of the agent, unauthorized, and not agreed to by the officers of the Louisville and Nashville Railroad Company empowered to authorize rates of freight over its lines.

57. Did or not the Louisville and Nashville Railroad Co. change and increase its rates of freight from Cincinnati to Milldale and Milldale to Cincinnati for freights shipped by the Kentucky Central to and from Livingston and beyond after the execution of the contract between the two companies August 8th, 1884, and because of that contract?

323 A. It did not; and in connection with the rates between Cincinnati and Milldale the contract for the use of the tract south of Livingston was never thought of or considered by the Louisville and Nashville Railroad Company.

58. State whether or not your reduced rates that you have spoken of as given to the Kentucky Central, and the local rates which you have spoken of as applying in certain cases, were the rates, respectively, or not, given to other companies and parties, or did you charge others less for shipping over the same roads to the same point.

A. No traffic for which the Louisville and Nashville Railroad Company could or did compete was carried for any other railroad for less than the local rates of freight between Milldale and Cincinnati, as named. No traffic for any other railroad for which the Louisville & Nashville Railroad Co. could not and did not compete was carried at less than the special rates between Milldale and Cincinnati as given to the Kentucky Central railroad.

Cross-examination by Col. BULLITT:

324 59. You have given in your deposition a statement of the rates charged from Milldale to Cincinnati. Is there not a difference made in the rates charged to the Kentucky Central for business going over this Jellico Branch and freights going, for example, over the Chesapeake and Ohio road to Cincinnati?

A. Yes, sir.

60. Is it not true that the higher rates charged the Kentucky Central for freights going over this Jellico line than were charged for freight going by the Kentucky Central over the Chesapeake & Ohio?

A. Yes, sir.

61. Is it not also true that higher rates were charged from Milldale to Cin. for freights going over the Jellico road than were charged

for freights originating on the Kentucky Central this side of the Jellico Branch?

A. Yes, sir; except from Lexington.

62. How do you mean except from Lexington?

A. On traffic from Lexington over the Kentucky Central the same rates were charged between Milldale and Cincinnati that were charged on traffic from points over the Jellico Branch.

63. Is not this true that immediately after the contract was
325 confirmed and went into effect that you raised the rates on the Kentucky Central for freights going from Milldale to Cincinnati?

A. Yes, sir.

64. When did you make the change?

A. We made no change.

65. There was no change of rates in regard to freights over the Kentucky Central to Cincinnati made after this contract was made?

A. No, sir.

66. When this contract was made didn't you begin charging for freight going that way a rate which was lower than the rate which you charged at a subsequent period?

A. I have answered that no less rate was authorized by those having the power to authorize it; no less rate was authorized at any time between Milldale and Cincinnati on traffic from points south of Livingston than was charged according to the notice of October 17th.

67. I will read you a statement which is made in the deposition of Chas. L. Brown, on page 3 of that deposition, as follows:

"What was the rates upon the various kinds of freight paid by the Kentucky Central Company to the Louisvile & Nashville
326 Company prior to the 17th day of October, 1884?

A. General merchandise ranged from 2 to 2½ cents a hundred. I will give it in detail. Classes 1, 2, 3, 4, and 5, 2½ cents a hundred; grain, 2 cents per hundred—that is, in car-load lots; class A, 2 cents a hundred; class B, 2½ cents a hundred; class C, 2½ cents a hundred; coal, 2 cents a hundred; live stock, $5 per car; coaches and sleepers, $8 per car; salt, 2 cents a hundred. These rates subject to the following conditions, namely: Applies only on shipments to and from Kentucky Central and Chesapeake and Ohio railroads and does not apply on business to and from Lexington proper or points east of Lexington on Louisville, Cincinnati and Lexington Division. Those rates were in effect up to October 17th, 1884, and were issued to us by the Louisville & Nashville railroad January 7th, 1884.

October 17th, 1884, we were notified that on and after that date the following rates would be charged the Kentucky Central on business destined to or beyond Livingston and what was then Stanford Junction, Ky. Those are the two points covered by this advance; also to Lexington, Ky.

327 Now, I will give you the rates: First class, 9 cents a hundred; second class, 8 cents a hundred; third class, 7 cents per one hundred; fourth class, 6 cents per hundred; fifth class, 5

cents per hundred; fifth class, under 24,000 pounds, 5 cents per hundred; fifth class, over 24,000 pounds, 4 cents per hundred; grain, less than car-load, 5 cents per hundred; grain, car-loads, 4 cents per hundred; salt, car-loads, 3½ cents per hundred; class A, 3½ cents per hundred; class B, 4½ cents per hundred; class C, 5½ cents per hundred; coal, 3 cents per hundred; live stock (horses, mules, and cattle), $8 per car; hogs, single deck, sheep, double deck, $9 per car; sheep, single deck, $7 per car. That is all.

—. I ask you if that is or not true, and, if not true, in what respect is it not true?

A. If any traffic passed between Cincinnati and Milldale prior to the 17th of October or prior to the 20th of October destined to points south of Livingston, including Livingston, or coming from points south of Livingston and including Livingston, at those rates it was an error.

It was unauthorized by anybody on the Louisville & Nashville railroad having authority to authorize rates.

328 68. You mean the rates first mentioned—the rates that Mr. Brown mentions?

A. I mean if any freight passed between Milldale and Cincinnati to or from Livingston and points south at those low rates of two and one half cents per hundred pounds it was without authority and an error. On the contrary, just as soon as we ascertained that the Kentucky Central was endeavoring to secure traffic from Cincinnati to points south of Livingston we very promptly took the master up, not having any connection whatever or any relation whatever to the lines south of Livingston—none whatever.

69. Is not this a fact, that for freights originating at points north of Livingston you charged these low rates?

A. All except Lexington. On all points north of Livingston, for the traffic of which we did not compete with the Kentucky Central railroad, we accepted these special reduced rates, made to apply to that traffic. On all traffic from Lexington and from Livingston and points south of Livingston to those points for which we have made no reduced rates we charged our regular tariff rates.

329 70. Then the fact is this—that, excepting freights originating at Lexington, you charged the Kentucky Central for all freights originating at other points at the low rates which have been named?

A. Except Livingston and Stanford Junction, which might be considered points on the Kentucky Central as they are on the Louisville & Nashville.

71. Did you charge the high rates from Livingston?

A. Yes, sir.

72. The contract went into effect as soon as the Kentucky Central reached Livingston?

A. I believe it did.

73. Then the fact is that soon as they commenced to compete for business from Lexington—as soon as you discovered that they were attempting to compete for business from Livingston—you caused the

local rates or higher rates, as mentioned by Mr. Brown, to be changed?

A. No, sir; not exactly that. Whenever we find business coming to us it is part of the business of the general freight department to look at it & see what rates we are to give on that business, and whenever we found that business coming to us our agents
330 naturally asked what they should charge in such business, and they were notified that they should charge these local rates, and a letter was sent to Mr. Brown to that effect also, that there might be no mistake about it.

74. When did the Kentucky Central begin to do business from Livingston?

A. The record of the first shipment in car-loads which they asked us to carry from Cincinnati to Milldale that we have was that of a shipment of a car-load of fruit from Cincinnati on the night of the 29th of September, 1884.

75. Was that at high rates or low rates?

A. I can tell by referring to our record, but I have not got the record here.

76. I will ask you to give the record showing the rates from Milldale to Cincinnati charged for business going over the Kentucky Central from points beyond Jellico, and I will ask you to give this between the following dates, from the time that the contract between the Kentucky Central and the Louisville and Nashville went into effect, to wit, September 1st, 1884, and the time that the Kentucky Central ceased to compete for business coming from points
331 beyond Jellico. In making this statement I ask that you will give the rates on the various classes of freight as they existed from time to time and the changes that were made in them, and to give the reasons for the changes that were thus made.

A. I will do so.

77. I will ask you is it not a fact that the higher rates mentioned by Mr. Brown, and which you say were charged for business coming from beyond Jellico, were charged for the purpose of preventing the Kentucky Central from competing with the Louisville & Nashville Railroad Co. for business coming from points south of Jellico?

A. No, sir; it is not.

78. What was the object, then, of charging the Kentucky Central higher rates from points beyond Jellico than you charged for freights originating north of Livingston?

A. I have already explained in my deposition that low rates at which we carried traffic to and from local points on the Kentucky Central paid us not more than the cost of doing the business. As a matter of fact it was a question between the vice-president and myself whether or not it paid us as much as it cost us to do the
332 work. We did it more as a matter of accommodation to the Kentucky Central on business for which we could not and did not compete, but when it came to business which we could handle at a profit we did not feel that there was any reason whatever why we should undertake to carry the business for the Kentucky Central railroad, in competition with our own line, at rates

which was not more than the actual cost of moving the freight, if so much as that. That is the reason.

79. You charged these higher rates only from competitive points?

A. Only on business to and from competitive points.

80. You charged this because it was business in which the Kentucky Central was competing with the Louisville & Nashville railroad?

A. We charged it because we felt that as we could haul that business and make a profit out of it we ought to make some little profit off of it if we had to haul it for somebody else.

81. I say you charged these higher rates only from competitive points, and charged them because the business was coming from competitive points; is not that the fact?

333 A. We charged them because we wanted to make some profit out of the business out of which we would make a profit if we hauled it ourselves.

82. Please answer my question as I put it. Did you not charge these rates only from competitive points, and didn't you charge them because they were freights coming from competitive points?

A. I will answer the question in this way: If we could not have hauled the property at a profit we, perhaps, would have been willing to have hauled it at the low rates.

83. You are not willing to answer the question yes or no. I repeat my question: Were not these higher rates charged because the freight was coming from competitive points?

A. It was charged because we could carry the same business and make a profit.

84. Is it not a fact that by reason of these charges from Milldale to Cincinnati that the Kentucky Central could not successfully compete with the Louisville & Nashville railroad for business coming from points beyond Jellico?

A. I don't think so.

85. Is it your opinion that the Kentucky Central, paying

334 those rates, could successfully compete for business south of Jellico?

A. Yes, sir; it is.

86. Could they carry that business and pay those rates and make a profit of it?

A. From my general knowledge as a freight agent, I have no doubt that the Kentucky Central railroad could have induced the East Tennessee, Virginia & Georgia railroad, which reaches south through very long distances, to have joined with it in the payment of these prices and could have carried the property and made a profit, paying us these charges.

87. Suppose they could not have made that arrangement with the East Tennessee, Virginia and Georgia railroad to assist in paying those charges and they had to bear them themselves, could they then have successfully competed with you under those charges?

A. I don't think it is fair for me to suppose that they could not have induced the East Tennessee, Virginia and Georgia railroad to share — them or that they would have shared with them. I may

say that I feel sure that the East Tennessee, Virginia and
335 Georgia railroad would have shared with them.

88. This increase in rates was a pretty heavy burden on the Kentucky Central, at any rate, was it not?

A. I think not. The difference between what we charged on grain for points south of Livingston was only three cents per hundred pounds more than we charged on business for their local stations. On first-class freight they could have paid nine cents per hundred pounds out of their proportion.

89. The Kentucky Central would have to haul through freights at a less rate than they hauled their own local freights, would they not?

A. They could not charge for through freight what they could charge as local rates. I think their proportion of all through freights would be less than local rates.

90. Don't you know it is considerably less?

A. That is generally the case—that through freights pay less per ton per mile than local freights.

Also the deposition of M. H. SMITH, retaken at the same time and place.

The said witness, being first duly sworn by me, testified as follows:

336 The witness here files, as part of his deposition, a certified copy of the contract between the Louisville and Nashville Railroad Company and the Knoxville & Ohio Railroad Co. and of a letter sent by Gen. E. P. Alexander, sent by direction of the former to the president of the latter company, under date of December 11th, 1880, and of the proceedings of the meetings of the board of directors of the Louisville & Nashville Railroad Co., under date of December 22nd, 1880; also copy of proceedings of the board of directors of the Louisville & Nashville Railroad Company, held January 5th, 1881, approving the above-mentioned action of the board at its meeting of December 22, 1880. Said papers are hereunto attached and are marked, respectively, Exhibits "T," "U," and "V."

The witness also files, as part of his deposition, certified copies of the minutes of the meetings of the board of directors of the Louisville & Nashville Railroad Co., held on the 26th and 30th days of August, 1884, in reference to the approval by it of the execution of the contract between the Louisville & Nashville Railroad Company and the Kentucky Central Railroad Company, set up by the
337 former company in this suit and marked, respectively, Exhibits "W" & "X."

Witness also files, as part of his deposition, a certified copy of the contract between the Louisville & Nashville Railroad Company and the Kentucky Central Railroad Company in reference to the use by the latter company of the road of the former company for a short distance north of Lexington, Ky., which paper is marked Exhibit "Z." All these exhibits are referred to in a previous part of the deposition of this witness.

Witness also states that the E. P. Alexander mentioned in the answer to question 18 of this deposition is the same Alexander and the two letters therein mentioned by him are the same letters mentioned in the contract of August 8th, 1884, between the Louisville & Nashville Railroad Company and the Kentucky Central Railroad Company set up and sued on by the former company herein.

This contract between the Louisville and Nashville Railroad Company, a corporation chartered by the laws of Kentucky, with its principal place of business at Louisville, Ky., and the Knox-
338 ville & Ohio Railroad Company, a corporation chartered by the laws of Tennessee, with its principal place of business at Knoxville, Tenn., witnesseth:

That in order to form a direct railroad communication between the city of Louisville, Ky., and the city of Knoxville, Tennessee, and for and in consideration of one dollar mutually paid and delivered and the mutual undertakings hereinafter mentioned, the Louisville & Nashville Railroad Company hereby binds and obligates itself that on or before the 1st day of July, 1882, it will build and complete, or cause to be builded and completed, a railroad of five-foot gauge from Livingston, Kentucky, to some point on the Tennessee and Kentucky line in Whitley county, Kentucky, or Scott county, Tennessee, and on the waters of the Elk Fork of the Cumberland river, there to connect with an extension of the Knoxville & Ohio railroad to be built by said Knoxville & Ohio Railroad Company, as hereinafter provided and stipulated.

And in consideration of the recitals hereinbefore made and the agreement and undertaking of the said Louisville & Nash-
339 ville Railroad Company the Knoxville & Ohio Railroad Company hereby binds and obligates itself that on or before the 1st day of July, 1882, it will build and complete, or cause to be builded and completed, a railroad of five-foot gauge from Careyville, Tenn., to some point on the Kentucky and Tennessee line in Whitley county, Kentucky, or Scott county, Tenn., and on the waters of the Elk Fork of the Cumberland river so as to connect with the said railroad to be built by the Louisville & Nashville Railroad Company as aforesaid.

It is further stipulated and agreed by the parties heretofore that for every day *ye*yond the 31st day of December, 1882, that either of the parties to this contract shall fail to have built or completed the railroad hereinbefore undertaken by either of them to be built and completed to the meeting or connecting point herein fixed the party so failing to have completed its road under this contract shall pay to the other party the sum of two hundred dollars for each day it so fails to perform and fulfill its contract and until the same is fully performed as herein stipulated.

In witness whereof this contract is signed and delivered in

duplicate and the seals of the parties thereto duly and lawfully attached this twenty-third day of December, 1880.

LOUISVILLE & NASHVILLE R. R. CO.,
[SEAL.] By E. H. GREEN, *Pres't.*
KNOXVILLE & OHIO RAILROAD CO.,
[SEAL.] By E. M. McGHEE, *President.*
JOHN L. MOSES,
Sec. & Treas. Knox. & Ohio R. Co.

Whereas it is of great advantage to the East Tennessee, Virginia and Georgia Railroad Company that the Knoxville & Ohio Railroad Co. should extend its line from Knoxville to the State line of Kentucky to connect with the extension of the Knoxville Branch of the Louisville & Nashville railroad;

And whereas, to induce the Louisville & Nashville Railroad Co. to build and complete said extension, it is necessary that the East Tennessee, Virginia & Georgia railroad should guarantee the faithful performance of the contract of the Knoxville & Ohio Railroad Company to build its railroad to the State line:

Now, in consideration of the premises and of one dollar to
341 it in hand paid, the East Tennessee, Virginia & Georgia Railroad Company hereby guarantees to the Louisville & Nashville Railroad Company the faithful performance by the Knoxville and Ohio Railroad Company of all the covenants, agreements, and conditions contained in the contract, bearing even date herewith, made by the said Knoxville & Ohio Railroad Company with the Louisville & Nashville Railroad Company for the completion of the line of railroad from Louisville to the Kentucky State line.

In witness whereof the East Tennessee, Virginia and Georgia Railroad Company hath caused its corporate seal to be hereto affixed and the same to be subscribed by its president and secretary this twenty-third day of December, 1880.

EAST TENNESSEE, VIRGINIA AND
GEORGIA R. R. CO.,
[SEAL.] By E. W. COLE, *Pres't.*

JAMES G. MITCHELL,
Sec. & Treas. East Tenn., Va., and Georgia R. R. Co.

I, John L. Moses, secretary of the Knoxville & Ohio Railroad Company, do hereby certify that at a meeting of the board of
342 directors of said Co. held in the office of the president, in Knoxville, Tennessee, on the 28th day of December, 1880, the following resolution was unanimously adopted by the board:

Resolved, That the president and secretary of this company are hereby authorized and directed to execute the contract this day submitted between the Louisville & Nashville Railroad Company and the Knoxville and Ohio Railroad Company, and that said contract be hereby directed to be spread upon the records of this company.

I also certify that the contract mentioned in the foregoing resolution is that to which this paper is attached, which bears date the 23d day of December, 1880, which provides for the formation of a direct railroad communication between the city of Louisville, Ky., and the city of Knoxville, Tenn., and in which the Louisville and Nashville Railroad Company and the Knoxville and Ohio Railroad Co. are the contracting parties.

In testimony whereof I have hereunto set my hand and affixed the seal of the company the 30th day of December, 1880.

[SEAL.] JNO. L. MOSES,
Secretary of the Knox. & O. Railroad Co.

343 NEW YORK, *Dec.* 11, 1880.

To the Knoxville & Ohio Railroad Co., C. M. McGhee, Esq., pres't:

Referring to a contract about to be made between the Louisville and Nashville Railroad Company and the Knoxville & Ohio Railroad Co., under which each agrees with the other to meet at the boundary between the States of Kentucky and Tennessee on or before the first day of July, 1882—

I have to say that I hereby agree for and on behalf of the Louisville and Nashville Railroad Co. that that company will, at the proper time and in the proper manner, enter into a contract between itself and the Ky. Central Railroad Co. granting to the latter the right to work over the line of the Louisville & Nashville Railroad Company between the point at which they shall connect with our road and the Tennessee State line upon terms substantially indicated to the Kentucky Central in two letters from myself to Mr. W. Ernst, president of the Kentucky Central Railroad Co., of prior date to this (Nov. 4 & Nov. 30), upon being requested so to do by your Co., and this right for the Kentucky Central railroad
344 to work over our track upon the terms stated is hereby admitted to constitute a part of the consideration moving you to meet us at the State line.

Very resp'y yours,

[SEAL.] E. P. ALEXANDER, *V. P.*

I, John L. Moses, secretary of the Knoxville and Ohio Railroad Company, certify that the foregoing is a correct copy of a letter on file in the office of said company, and it is hereby attached to and its terms are made a part of a contract entered into the 23d day of December, 1880, between the Louisville & Nashville Railroad Co. and the Knoxville and Ohio Railroad Company, providing for the formation of a direct railroad communication between the city of Louisville, Ky., and the city of Knoxville, Tennessee.

In testimony whereof I have hereunto set my hand and affixed the seal of the company the 30th day of December, 1880.

JOHN L. MOSES,
Secretary of the Knoxville & O. R. Co.

At a meeting of the board of directors of the East Tennessee, Virginia and Georgia Railroad Company held upon this 30th
345 day of December, 1880, in Knoxville, Tenn., the following resolutions were unanimously adopted:

Resolved, That the president of this company be, and he is hereby, authorized and directed to execute the contract read to the board under which the East Tennessee, Virginia and Georgia Railroad Company guarantees the performance on the part of the Knoxville and Ohio Railroad Company of the stipulations contained in a contract between E. H. Green, president of the Louisville and Nashville Railroad Company, and C. M. McGhee, president of the Knoxville and Ohio Railroad Company, regarding the completion of the track of the *of the* respective companies to a point of junction at the boundary line of the States of Tennessee and Kentucky, bearing date December 23rd, 1880, and that such contract be verified by the seal of the company.

Resolved, That the said contracts, together with the letter of Vice-President Alexander, which forms a part of said contract, be spread on the minutes of this board.

I certify that the above is a true copy of the resolutions as same appears of record on the minutes of the board.

JAMES G. MITCHELL, *Secretary.*

346 I, R. K. Warner, secretary of the Louisville and Nashville Railroad Company, do certify the foregoing to be a true copy of the original contract and attached certificates on file in my office.

[SEAL.] R. K. WARNER, *Secretary.*

— of the Louisville & Nashville Railroad Co., held at the office of the company, No. 52 Wall St., in the city of New York, on the 22d day of December, 1880.

Present: Mr. E. H. Green, president; Messrs. E. P. Alexander, C. C. Baldwin, G. C. Clark, C. H. Clark, B. F. Guthrie, H. V. Newcomb, & James S. Woodward.

On motion of Mr. Guthrie, seconded by Mr. Guthrie—

Resolved, That the following contract with the Knoxville and Ohio Railroad Company be adopted and the president or first vice-pres. be authorized to execute the same under the seal of the company: Provided, That the performance of said contract by the Knoxville and Ohio Railroad Company be guaranteed by the East Tennessee, Virginia and Georgia Railroad Company, and
347 that the first vice-president be authorized to send the following letter in regard to the Kentucky Central Railroad Company to the Knoxville and Ohio Railroad Company, and that the president or first vice-president be authorized to execute a contract with the Kentucky Central Railroad Company embodying the provisions contained in the aforesaid letter.

This contract between the Louisville and Nashville Railroad Co., a corporation chartered by the laws of Kentucky, with its principal place of business at Louisville, Ky., and the Knoxville and Ohio Railroad Company, a corporation chartered by the laws of Ten-

nessee, with the principal place of business at Knoxville, Tenn., witnesseth:

That in order to form a direct railroad connection between the city of Louisville, Kentucky, and the city of Knoxville, Tenn., and for and in consideration of one dollar mutually paid and delivered and the mutual undertakings hereinafter mentioned, the Louisville and Nashville Railroad Company hereby binds and obligates itself

348 that on or before the first day of July, 1882, it will build and complete or cause to be builded and completed a railroad of five feet gauge from Livingston, Kentucky, to some point on the Tennessee and Kentucky line in Whitley county, Kentucky, or Scott county, Tennessee, and on the waters of the Elk Fork of the Cumberland river, there to connect with an extension of the Knoxville and Ohio railroad to be built by said Knoxville and Ohio Railroad Company as hereinafter provided or stipulated.

And, in consideration of the recitals hereinbefore made and the agreement and undertaking of the said Louisville and Nashville Railroad Company, the Knoxville and Ohio Railroad Company hereby binds and obligates itself that on or before the first day of July, 1882, it will build and complete or cause to be builded and completed a railroad of five feet guage from Caseyville, Tenn., to some point on the Kentucky and Tennessee lines in Whitley county, Kentucky, or Scott county, Tennessee, and on the waters of the Elk fork of the Cumberland river, so as to connect with the said railroad to be built by the Louisville & Nashville Railroad Company as aforesaid.

349 It is further stipulated and agreed by the parties hereto that for every day beyond the thirty-first day of December, 1882, that either of the parties to this contract shall fail to have built or completed the railroad hereinbefore undertaken by either of them to be built and completed to the meeting or connecting point herein fixed the party so failing to have completed its road under this contract shall pay to the other party heretofore the sum of two hundred dollars for each day it so fails to perform as herein stipulated.

In witness whereof this contract is signed and delivered in duplicate and the seals of the parties thereto duly and lawfully attached this — day of ——, 188–.

NEW YORK, *December* 11, 1880.

To the Knoxville and Ohio R. R. Co., C. M. McGhee, Esq., prest.:

Referring to a contract about to be made between the Louisville and Nashville Railroad Company and the Knoxville and Ohio Railroad Company, under which each agrees with the other to meet at the boundary between the States of Kentucky and Tennessee on or before the first day of July, 1882, I have to say that I hereby agree, for and on behalf of the Louisville and Nashville Railroad Company, that that company will, at the proper time and in a

350 proper manner, enter into a contract between itself and the Kentucky Central Railroad Company, granting to the latter

the right to work over the line of the Louisville and Nashville Railroad Company between the point at which they shall connect with our road and the Tennessee State line upon terms substantially indicated to the Kentucky Central in two letters from myself to Mr. W. Ernst, president of the Kentucky Central Railroad Company, of prior date to this, upon being requested so to do by your company, and this right for the Kentucky Central Railroad Company to work over our track upon the terms stated is hereby admitted to contribute a part of the consideration moving you to meet us at the State line.

I, R. K. Warren, secretary of the Louisville and Nashville Railroad Company, do certify the foregoing to be a true extract from the minutes of a meeting of the board of directors of said Co. held as hereinbefore mentioned.

[SEAL.] R. K. WARNER, *Secretary*

At a meeting of the board of directors of the Louisville
351 and Nashville Railroad Co. held at the office of the company, No. 52 Wall street, in the city of New York, on the 5th day of January, 1881.

Present: Mr. E. H. Green, president; Messrs. Alexander, Baldwin, Newcomb, Geo. C. Clark, C. H. Clark, and Woodyard.

The minutes of the meeting held Dec. 22nd were read and approved.

I, R. K. Warren, secretary of the Louisville and Nashville Railroad Co., do certify the foregoing to be a true copy from the minutes of a meeting of the board of directors of said company held as hereinbefore mentioned.

[SEAL.] R. K. WARNER, *Sec'y.*

At a meeting of the board of directors of the Louisville and Nashville Railroad Company held at the company's office, 52 Wall street, New York, on the 26th day of August, 1884.

Present: Mr. A. M. Quarrier, vice president; Messrs. F. W. Foote, Heman Clark, E. H. Green, Ex. Norton, J. B. Probst, J. S. Rogers, W. S. Williams.

352 "On motion of Mr. Williams, seconded by Mr. Clark, it was—

Resolved, That the contract with the Kentucky Central railroad for use of track between Livingston and Jellico be again laid over until next meeting."

I, R. K. Warren, secretary of the Louisville and Nashville R. R. Company, do certify the foregoing to be a true extract from the minutes of a meeting of the board of directors of said company on the date aforesaid.

[SEAL.] R. K. WARREN, *Sec'y.*

At a meeting of the board of directors of the Louisville and Nashville Railroad Company held at the office of the company, No. 52 Wall street, in the city of New York, on the 30th day of August, 1884.

Present: Mr. M. H. Smith, pres't; Messrs. H. Clark, Jno. A. Carter, Fred'k W. Foote, E. H. Green, J. H. Lindenberger, Ex. Norton, J. D. Probst, Jas. B. Wilder, W. L. Williams.

"The minutes of the meeting of the board held August 25, 1884, were read and approved. The agreement between this com-
353 pany and the Kentucky Central Railroad Company was again brought — action, and it was, on motion of Mr. Clark, seconded by Mr. Williams—

Resolved, That the action of the president of this company be, and is hereby, approved in the executing and delivering said contract on behalf of this company and in conformity with action of the former board of directors of December 22d, 1880."

I, R. K. Warren, secretary of the Louisville and Nashville Railroad Company, do certify the foregoing to be a true copy from the minutes of a meeting of the board of directors of said Co. held as above mentioned.

[SEAL.] R. K. WARREN, *Sec'y.*

This indenture, made the 18th day of August, A. D. 1882, by and between the Louisville and Nashville Railroad Company, hereinafter called the L. & N., of the first part, and the Kentucky Central Railroad Company, hereinafter called the K. C., of the second part, witnesseth:

That for and in consideration of the mutual promises and undertakings hereinafter expressed the parties hereto agree as follows:

354 First. The L. & N. agrees to permit the K. C. to lay a track of two rails on the right of way of the L. & N. from the proposed junction of the K. C.'s road with the L. & N.'s Lebanon-Knoxville Branch at or near Roundstone Sinks to Livingston station—a distance of three miles, more or less. The track for said distance shall be valued at thirty-five thousand dollars per mile, less the value of the rail now on it, which is five thousand dollars per mile, making the valuation, for the purpose of this agreement, thirty thousand dollars per mile, on one-half of which, to wit, fifteen thousand dollars per mile, the K. C. shall pay to the L. & N. a rent at the rate of seven per cent. per annum, payable semi-annually, commencing from the date of the completion of track.

Second. The K. C. is to lay for the distance above mentioned an independent two-rail track of its own gauge on the present road-bed of the L. & N. The work of laying this track for the K. C. shall be done by the L. & N., and the expense of doing the work shall be charged to and paid by the K. C. so soon as the work shall have been
355 done and bills of actual cost shall have been rendered. The K. C. is to furnish the rails, splices, bolts, washers, and spikes at its own expense.

Third. The keeping of said joint track in good repair shall be done by the L. & N., and monthly statements of the cost of the work therefor, including the renewals of rails, cross-ties, ballast, and other

material, shall be rendered at the end of each month to the K. C., and each party hereto shall pay one-half of the cost thereof:

Provided however, That the two bridges over Roundstone, which the L. & N. is now preparing to rebuild, shall first be rebuilt by it, and no part of the cost of such rebuilding shall be charged to the K. C., but the expense of subsequent repairs thereto or rebuilding thereof shall be jointly borne by the two parties as above stipulated.

Fourth. At the junction of the K. C.'s road with the L. & N.'s road near Roundstone Sinks the K. C. shall erect at its own expense a small building suitable for a telegraph office.

Fifth. The L. & N. shall construct electric block signals on
356 said three miles of track at the joint expense of the parties hereto, and each party shall pay one-half, not alone of the construction, but also for the maintenance of the telegraph office at the junction, including the repairs, salaries, light, fuel, &c.

Sixth. If the parties hereto determine to have a joint depot at Livingston the expenses of construction and repairs of joint tracks and buildings, salary of agent and his force, light, fuel, &c., shall be borne equally by the parties hereto, and all bills therefor shall be made out and paid monthly.

Seventh. All trains run by the K. C. over said joint track shall be under the direction of the transportation department and train despatcher of the L. & N., and shall conform to the L. & N.'s rules and regulations as to safety which may from time to time be issued by it. All joint employees shall be employed and dismissed by the L. & N., but the K. C. shall have the right to object to any appointment not satisfactory to it, and also to ask the dismissal of any employé not satisfactory to it.

Eighth. This agreement shall take effect from its execu-
357 tion by both parties and last for twenty years from the first day of July, 1883, but either party hereto shall have the right to terminate it on giving the other party twelve months' written notice of the determination to do so.

In witness whereof the parties hereto have caused their corporate seals to be hereto affixed, the party of the first part has caused the same to be signed by its vice president, and the party of the second part has caused the same to be signed by its president the day and year first above written. Executed in duplicate.

THE LOUISVILLE & NASHVILLE R. R. CO.,

[L. S.] By M. H. SMITH, *V. P.*
W. RANNEY, *Sec'y.*

KENTUCKY CENTRAL,

[L. S.] By M. E. INGALLS, *President.*
G. W. BENDER, *Secretary.*

I, R. K. Warner, secretary of the Louisville and Nashville Railroad Co., do certify the foregoing to be a true copy of the original contract on file in my office.

[SEAL.] R. K. WARNER, *Secretary.*

358 UNITED STATES OF AMERICA, } ss:
District of Kentucky, }

I, Joseph C. Finnell, clerk of the United States circuit court for the district of Kentucky, at Covington, do hereby certify that the foregoing three hundred and fifty-seven (357) pages contain a true and complete transcript of the pleadings and proceedings had in said court on the intervening petitions of the Louisville and Nashville Railroad Company in the case of George T. Bliss and Isaac E. Gates, trustees, against The Kentucky Central Railroad Company, except such parts as are ommitted by the stipulation filed herein, as the same now appear of record and on file in this office.

Witness my hand as clerk and the seal of said circuit court, at Covington, this 6th day of October, A. D. 1887, and of our Independence the 112th year.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

JOS. C. FINNELL,
Clerk U. S. Circuit Court, Ky. Dist.

Endorsed on cover: Kentucky C. C. U. S. No. 1294. The Louisville and Nashville Railroad Company, appellant, *vs.* The Kentucky Central Railroad Company and George S. Bliss and Isaac E. Gates, trustees. Filed October 31, 1887.

JAMES H. [illegible]
CLERK

Supreme Court of the United States

OCTOBER TERM, 1887.

The Louisville & Nashville Railroad Co., - - Appellant,

vs. } No. 1294.

The Kentucky Central Railroad Co., and George S. Bliss and Isaac E. Gates, Trustees, - Appellees.

BRIEF FOR APPELLANT, BY

L. H. NOBLE.

BARNETT, NOBLE & BARNETT.

Supreme Court of the United States.

OCTOBER TERM, 1887.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, ... *Appellant*,

VERSUS

THE KENTUCKY CENTRAL RAILROAD COMPANY AND GEORGE S. BLISS AND ISAAC E. GATES, TRUSTEES, . . *Appellees.*

No. 1894.

STATEMENT OF FACTS.

On the first day of May, 1881, the appellee, the Kentucky Central Railroad Company, then being the owner of and operating a line of railroad from Covington, Kentucky, through Paris to Lexington, Kentucky, a distance of ninety-nine miles, and contemplating the extension of said road to Livingston, in Rockcastle County, Kentucky (see Record pp. 2, 5), on that day and of that date executed and delivered to its co-appellees, George S. Bliss and Isaac E. Gates, as trustees, a mortgage of said road completed and in contemplation, and its rolling stock, to secure the payment of its bonds for six million and thirty-seven thousand dollars, which were to be and were on the first day of July, 1881, issued to raise money, by the sale thereof, to pay past indebtedness and to construct said extended line of road. (Record, pp. 1–5.)

Before said appellee commenced the construction of its extended road from Lexington to Livingston, it *initiated* negotia-

tions with the appellant, which resulted in an informal contract between them, by which appellant was to and did procure the right of way, and extended the Knoxville Branch of its road from Livingston, aforesaid, to Jellico, on the line between the States of Kentucky and Tennessee, over which extended road said appellee was to have the joint and equal use and traffic rights with itself, upon the payment to appellant of the interest semi-annually, at six per cent per annum, on one half the cost of the said road, and one half the cost of the maintenance, repairs, and renewal of same. (See Record, pp. 101, 102, 103, 104.)

On the 8th day of August, 1884, after the said appellee had completed the extension of its road from Lexington to Livingston, and appellant had completed its said extension of its Knoxville Branch from Livingston to Jellico, in accordance with the terms of said informal contract, said companies, the Kentucky Central Railroad Company and the Louisville & Nashville Railroad Company, entered into a more formal contract (Marked exhibit "A," p. 21, Record), by which it was agreed that the cost to appellant of its said extended road was $2,000,000, and the interest on one half thereof, or $60,000, should be paid annually, in two equal installments, one on the first day of June and the other on the first day of December each year, for twenty-five years, by said appellee, the Kentucky Central Railroad Company. (Record, pp. 29, 3, 22, 119, 120.)

Some of the interest coupons on said bonds of the appellee, the Kentucky Central Railroad Company, not having been paid at maturity, under the terms of said mortgage, it was claimed by its co-appellees, Bliss and Gates, that thereby the bonds themselves became due and payable, and on the 28th day of January, 1886, in the Circuit Court of the United States, for the District of Kentucky, at Covington, Kentucky, this suit was brought by them against appellee, the Kentucky Central Railroad Company, to have foreclosed said mortgage and to have sold the railroad and rolling stock of said company to satisfy said bonded indebtedness.

By order of court the road was placed in the hands of a re-

ceiver on motion of said appellees, Bliss and Gates, on the first day of February, 1886, and remained in his hands until it was sold under decree of court on the 23d day of April, 1887. (Record, p. 56.)

The Kentucky Central Railroad Company, from the time said contract took effect on the first day of September, 1884, until the first day of April, 1885, claimed all its traffic rights under said contract, equal to those of appellant, and exercised all of them, except that of running its own trains on and over said road; and it subsequently paid the stipulated price for the use of said road from September 1, 1884, to December 1, 1884, $15,000. (Record, pp. 109, 110, 58.)

At the time this suit was brought, said appellee, the Kentucky Central Railroad Company, was indebted to appellant under that contract $60,000 for the use of said road from December 1, 1884, to December 1, 1885, and $18,932.25 as one half of the cost of renewals, maintenance, and repairs of same; and, failing and refusing to pay the same, appellant on the 17th day of March, 1886, by leave of court, filed its intervening petition herein, setting up and asserting said indebtedness under said contract, and claiming a lien to secure the same as prior and superior to the lien retained by said mortgagees. Said lien was claimed under the eighth section of the amended charter of the Kentucky Central Railroad Company, entitled, "An Act to amend an act, entitled An Act to incorporate the Kentucky Central Railroad Company," approved March 20, 1871, which eighth section is in the words following, to wit:

"That to the extent of all claims of persons for injuries to stock or person, or for materials furnished said company, or breach of contract, the claimant shall have a lien upon the rolling stock of said company, any mortgage to the contrary notwithstanding." (Record, 17, 18, not denied; 2 Sess. Acts, 1871, p. 258.)

To that intervening petition both appellees, the Kentucky Central Railroad Company and Bliss and Gates, demurred. Said demurrers, after a full argument by counsel for each party, were

by the court, Jackson, Judge, overruled, and the court decided that appellant had a lien, under said statute, upon said rolling stock to secure said indebtedness to it; but, inasmuch as the acceptance of that amended charter was denied by both appellees, the court deferred the determination of the *character* of that lien until proof should be made of such acceptance. (See said Opinion, Record, pp. 31, 32, 33, 34, 35, 36, 37.)

Subsequently appellant, by leave of court, filed a first and second supplemental intervening petition, therein setting up and asserting the rent due by appellee, the Kentucky Central Railroad Company, to appellant under said contract, from December 1, 1885, to December 1, 1886, $60,000, and one half cost of maintenance, renewals, and repairs during that time, $15,421.93; and for rent due under said contract from December 1, 1886, to the 23d of April, 1887, $23,000; and for one half the cost of maintenance, renewals and repairs during that time, $7,100.10. Answers were filed by appellees to the original and said supplemental intervening petitions, therein denying the validity of the contract set up by appellant, for the alleged reason that neither of said railroad companies had authority to and never did enter into such a contract, and also denying that appellant had any lien to secure its alleged debts.

Issues were joined and proof taken by appellant and appellees, and the case, on the 10th day of June, 1887, was submitted to the court, "as to the debts set up and lien asserted by the intervenor, the Louisville & Nashville Railroad Company," and was argued by all the respective parties, and upon due consideration the court gave and rendered the following opinion and decree, to wit:

"That the eighth section of the amended charter of the Kentucky Central Railroad Company, approved March 20, 1887, does not embrace and create a lien in favor of the claims of the said the Louisville & Nashville Railroad Company, asserted in said several intervening petitions, and that said intervening petitioner had therefore no lien upon the property of the said Kentucky Central Railroad Company, or any part thereof, to secure the payment of said alleged indebtedness, and that the equity of the cause is

therefore with the complainants and with the Kentucky Central Railroad Company. It is therefore considered, adjudged, and decreed that the said intervening petitions of the said Louisville & Nashville Railroad Company be and the same are hereby dismissed at the cost of said Louisville & Nashville Railroad Company." (Record, p. 54.)

To which opinion and decree of the court the appellant excepted and prayed an appeal to this court, which was granted, and bond was executed as required by law. (Record, p. 55.)

Specification of Errors.

First Error. The court erred in not, by its decree, passing on the question of the indebtedness of appellee, the Kentucky Central Railroad Company, to appellant.

Second Error. The court erred in deciding that appellant had no lien upon the rolling stock of said appellee under section eighth of the amended charter of appellee, the Kentucky Central Railroad Company, approved March 20, 1871, and in dismissing appellant's intervening petitions.

Argument.

I.

As to the alleged error of the circuit court in not passing upon the indebtedness of appellee, the Kentucky Central Railroad Company, to appellant, we remark that a large amount of proof was taken by appellant to show that indebtedness. The case was submitted to the court, as the decree shows, on the question "as to the debts set up" as well as to the "lien asserted by the intervenor, the Louisville & Nashville Railroad Company." One question was before the court for determination as well as the other, and yet a trial has not been had as to the indebtebtedness, as also appears by the decree. We can not see any legal reason why said decree could not have embraced the question of such indebtedness. We are well aware that no personal judgment could have been properly rendered on such in-

debtedness, for we did not in our intervening petitions claim it, but why the amount of such indebtedness could not have been judicially determined we can not perceive.

Should this honorable court reverse the opinion of the circuit court on any ground, on the return of the case to that court, another submission would have to be made and trial had on that question of indebtedness, which had already been once submitted and no decision rendered thereon.

Although there is nothing in that decree determining whether appellant has or has not any just debt against the appellee, the Kentucky Central Railroad Company, yet the court must have assumed that a debt existed, or it would have placed its decree on the express ground that there was no debt to be secured by a lien, if one existed; and yet we will be compelled here to satisfy this court that there was in fact a debt, growing out of a breach by the appellee, the Kentucky Central Railroad Company, of the contract between the two companies; and if we fail in this, of course the question of lien or no lien is immaterial.

Had the court passed upon the question of debt, it must have adjudged that one existed; and then, in case this court should reverse the lower court on the question of lien or no lien to secure said debt, on the return of the case to that court no new submission or trial would be necessary in regard to said indebtedness. We can not but insist that the circuit court erred on this point.

II.

The second error complained of goes to the whole merits of appellant's case.

It involves not only the question of appellant's claimed statutory lien, but as well the question of debt or no debt due by the appellee, the Kentucky Central Railroad Company, to appellant; and the question of debt or no debt is determined by the fact of a contract or no contract binding upon appellant and said appellee under which said debt could alone be created.

That the debts of appellant, as set out in its intervening peti-

tions and proved, are correct, have not been and will not be questioned by appellees, for they admit the amount of expenses incurred in the renewals, repairs, and maintenance of appellant's road between Livingston and Jellico, to save the expense of making the voluminous proof thereof part of the record of the case for this court (Record, 56), and appellees' pleadings admit the amount of rent due under the contract from December 1, 1884, to April 23, 1887, at $60,000 per year; but appellee, the Kentucky Central Railroad Company, insists that it is not liable for that debt, because, as it claims, the contract by and under which it was created was not executed by appellant and said appellee, the Kentucky Central Railroad Company, but only by their respective agents without authority; and that if it had been executed by the two companies it would not have been binding, as said companies, nor either of them, had authority to enter into such a contract.

Appellant claims that said contract was executed by said companies, and that each of them had authority to enter into such a contract. We are fully aware of the doctrine so clearly recognized by this court, that a railroad company, without special legislative authority for so doing, can not lease its road or accept the lease of the road of another company, but with this doctrine plainly before us we feel assured that we can establish the above propositions.

Express Authority.

The authority of the appellee, the Kentucky Central Railroad Company, is derived from the following acts of the Kentucky Legislature:

The Covington & Lexington Railroad Company (now the Kentucky Central Railroad Company) was incorporated by an act of the legislature of Kentucky, approved February 27, 1849, by which power and authority were conferred on it "to construct a railroad, with single or double track, from the city of Covington to the city of Lexington, and to borrow money, and to pledge the property to secure it, etc." And by the 18th section of said

charter it is provided, "that any other railroad company which has been or may hereafter be chartered by the laws of this State may join and connect any railroad with the road hereby contemplated on such terms as said company may agree," etc. (Session Acts, 1848–9, p. 392.)

The Kentucky Central Railroad Company was incorporated by an act of the legislature of Kentucky, approved February 22, 1871 (Session Acts, 1871, p. 284):

"For the purpose of operating the Covington & Lexington Railroad Company, etc., and was thereby invested with all the powers, privileges, rights, immunities, and franchises, subject to the restrictions and limitations contained in the original charter of incorporation authorizing the construction of said road, and the various acts amendatory thereof."

By an amendment of the charter of said Kentucky Central Railroad Company, approved March 20, 1871 (Session Acts, 1871, p. 258), it was authorized,

"To extend its road and build and equip and maintain one or more branch roads and lines of telegraph from any point on the line of its main road to the southern boundary line of the State of Kentucky, etc., and to issue bonds and secure the same by mortgage on the road," etc.

Again, by an act approved February 27, 1849, amending the charter of said Covington & Lexington Railroad Company, it was provided (sec. 5), "that when any other railroad company shall connect with said road, or any of its branches, then the terms of transportation, both cars and locomotives, etc., shall be agreed upon by the companies." (Session Acts, 1848–9, p. 384.)

By another amendment of its charter, approved February 6, 1854, it is provided,

"That the said company may connect with any other line or lines of railroad, and any cars or freight from and for any other company, which may be agreed upon, and charge reasonable rates therefor. (Session Acts, 1853–4, p. 326.)

And by the sixth section of the aforesaid act of March 20, 1871, it is provided,

"That said company may consolidate its main line or branches hereby authorized with any other railroad, connecting therewith on such terms as may be agreed upon by a majority in interest of the stockholders of both companies." (2 Session Acts, 1871, p. 260.)

By another amendment to its charter, approved March 6, 1880 (Session Acts, 1879–80, p. 245), it is provided,

"That the said company shall have power to purchase, lease, subscribe to the capital stock of and loan its credit to any railroad now constructed, in whole or in part, or which may hereafter be commenced, and connecting with its road in any of its branches or leased lines, upon such terms as may be agreed on with the owners or controllers thereof, and such owners and controllers are hereby empowered to make any such contract of sale or lease, and to receive such subscription of capital stock or loan of credit."

And it is further provided in said amended act,

"That said company may also purchase and hold stock in any company owning or operating by lease, or otherwise, any such connecting road, and may lease its own road or roads, and sublet any road it may have leased under authority of this act, shall operate the same according to the terms of the charter thereof, and of the contract of purchase, or lease, not inconsistent with the provisions of such charter; and provided further, that the powers granted in this act shall not be exercised until authorized by a majority in interest of the stockholders of said company at a regular or called meeting, called to consider the same."

"Under those grants of authority," says Judge Jackson, in his decision overruling the demurrers to appellant's original intervening petition herein, "conferred directly and by reference and adoption on the Kentucky Central Railroad Company to join and connect with any other railroad, and to enter into agreements with such connecting lines of railroads in relation to transportation, both cars, locomotives, etc., it hardly admits of any doubt or question that the Kentucky Central Railroad Company had ample power and legislative sanction for entering into the contract with the Louisville & Nashville Railroad Company, which is made the foundation of the latter's claim." (Record, p. 36.)

We fully concur in the learned judge's opinion, as above quoted. The authority of the Louisville & Nashville Railroad Company to construct the extension of the Knoxville Branch of its railroad is derived from the following acts of the Kentucky Legislature, to wit:

The road was chartered by an act approved March 5, 1850 (Session Acts, 1849–50, p. 427), by which charter it was provided:

"That the President and Directors of said company are hereby vested with all powers and rights necessary to the construction of a railroad from the city of Louisville to the Tennessee line, in the direction of Nashville, the route to be by them selected and determined, not exceeding sixty-five feet wide, with as many set of tracks as they deem necessary."

By the second section of an amendment to that charter, approved March 5, 1851 (Session Acts, 1850–1, p. 442), it is provided as follows, to wit:

"That said company shall have power and authority to construct their road from the city of Louisville to any point or place in the direction of Nashville, Tennessee, and to connect the same with any road extending to Nashville, on such terms and conditions as the two companies may from time to time agree on for the through transportation and travel of freight and passengers; and said company shall have the same power and authority to construct a branch of said road to the Mississippi River, *and any other branch said company may desire*, that the charter gives to construct the main line, and with the same rights and privileges, and with the same duties and restrictions; and may, for the main line and branches, acquire, as provided in the charter and by this amendment, the right of way one hundred and fifty feet wide or more, if necessary; and the quantity of acres of land which they are authorized by the charter to acquire and hold shall be exclusive of the right of way of the road and branch."

By section 13 of the amendment to it its charter, approved January 17, 1856 (Session Acts, 1855–56, p. 190), it is provided as follows, to wit:

"Be it further enacted, that this act shall take effect from and after its passage, provided nothing herein contained shall

be construed to prevent the Louisville & Nashville Railroad Company from admitting branch roads to connect with it at any point or points to be agreed upon between said company and those who have or may subscribe stock for the construction of any branch road. The stock subscribed and the means created to construct each separate branch shall be faithfully applied to that purpose; and said company is hereby vested with the power and the right to issue its bonds under the provisions of this act to obtain means to construct and equip any branch road," etc.

The third section of said act is as follows, to wit:

"SEC. 3. That said company may, under the provisions of the thirteenth section of this act, from time to time *extend any branch road*, and may purchase and hold any road constructed by another company, or may agree on terms to receive the cars of other roads on their said road, but shall charge for the same the usual freight."

By an amendment to its charter, approved February 6, 1858 (Session Acts, 1857–58, p. 291), the Louisville & Nashville Railroad Company is authorized by the first section thereof to issue bonds for the purpose of completing said road, not exceeding $1,200 per mile; and by section 2 the means of supplying any deficiency is provided for; and section 3 is as follows, to wit:

"The provisions of section 1 and section 2 of this act shall apply to the Lebanon Branch and Memphis Branch to connect with other roads in Tennessee in as ample and beneficial manner as if enacted in a separate section to that effect."

By an amendment to its charter, approved February 26, 1863 (Session Acts, 1861–62, 63, 64, p. 501), it is provided,

"That on the Louisville & Nashville Railroad Company determining to extend the Lebanon Branch of said road to Danville, Mount Vernon, or Monticello, or some place in the direction of said places, or upon said railroad company determining to extend a branch west of the main stem into the coal regions, that it shall be lawful for said company to agree with the city of Louisville to lend to the company not exceeding six hundred thousand dollars, in thirty-year one-thousand-dollar bonds, bearing six per cent interest per annum, payable semi-annually in

Louisville, and secure the interest and principal on the branch or extension for which they may be loaned."

Besides the aforesaid legislative acts applying respectively to the Louisville & Nashville Railroad Company and the Kentucky Central Railroad Company, an act was approved January 22, 1858, entitled "An Act to authorize railroad companies to contract with each other," by the first section of which it is provided as follows:

"SEC. 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky, that all railroad companies in this commonwealth shall have power and authority to make with each other contracts of the following character: (1) For the consolidation of either the management, profits or stock of any two or more companies, the roads of which are or shall be so connected as to form a continuous road, either temporarily or permanently. (2) For the leasing of the road of one company to another, provided the roads so leased shall be so connected as to form a continuous line. (3) For the completion, in whole or in part, of the unfinished road of any company. (4) For giving a common name and style to any continuous road belonging to two or more companies; provided, however, that all such contracts shall be approved by a majority in interest of all the stockholders of each of the contracting companies, at some stated or called meeting of the same."

By the charter of the Louisville & Nashville Railroad Company, and the various acts amendatory thereof, as above cited, there can be no doubt that said company had ample and undoubted authority to construct the extension of its branch road from Livingston to Jellico, and to enter into the contract with the Kentucky Central Railroad Company, set up and relied on by appellant herein.

The court, Judge Jackson, in his opinion, says:

"The Louisville & Nashville Railroad Company, under its original charter and various amendments thereof, was likewise invested with full authority to make the contract in question." (Record, 36.)

The court says, further:

"Those grants conferred upon the Louisville & Nashville Railroad Company express authority to unite connecting roads, and make such traffic arrangements with them as might be agreed upon from time to time, including the necessary transportation of the cars of other companies over its road. In those legislative grants is found ample authority to support the contract in question, even if no such authority was found in the charter of the Kentucky Central Railroad Company, for that which the Louisville & Nashville Railroad Company may lawfully do, under power expressly conferred in a way of uniting or contracting with other companies chartered by the same State, can not properly be regarded as illegal, *ultra vires*, or contrary to public policy in respect to other companies, even though their charter should be silent as to such powers;" "but," he adds, "the contracting power of the Kentucky Central Railroad Company in respect to connections with other roads and traffic arrangements therewith are sufficiently broad and ample to sustain the validity of the contract in question between itself and the Louisville & Nashville Railroad Company." (Record, pp. 36, 37.)

This doctrine announced by Judge Jackson, that when both railroad companies are incorporated by authority of the same State, if one has express power to contract with another company, a contract between them is binding, although the other company is invested with no such express power, is sanctioned by several authorities, and it is difficult to understand how one company can enter into a contract with another company under express legislative authority, and that contract be illegal as to the other company acting under the authority of the same State, and there being nothing in its charter prohibiting such action.

But we are not forced to rest the legality of said contract as to either party on that ground. The authority conferred upon the Kentucky Central Railroad Company by the foregoing acts, not only embraced the making of physical connection of its road with the other, but also the running of its trains over the other road and the making of traffic arrangements with the other company.

Were the contract in controversy a lease by the one from the other company, it may be its validity might have to rest on aforesaid act of 1856, or that of 1880, but the contract is not a lease. The Kentucky Central Railroad Company, by that

contract, acquired no interest in the road of appellant, but only a right to jointly use it; in so doing neither party *parted with* or *acquired* any *franchise*. It is but a *traffic arrangement*, such—but perhaps for a longer time—as is daily made by and between our railroads. Appellant agrees to transport the freight of said appellee over its road at agreed rates, and to permit said appellee to transport its own freight in its own cars over said road. That is all there is of it.

But even if we had no express authority for the contract, a contract would be implied by law. We refer to the following authorities on this point:

Implied Authority.

Railroad Company v. Pratt, 22 Wallace, 123, where it is held "that a railroad company has the right to contract to transport freight and passengers over other lines of road."

Railway v. McCarthy, 96 U. S., 267, where that case is affirmed, the court saying:

"The principle is so well settled in this country that further citation of authorities in support of it is unnecessary. Such is also the rule in the English law."

An arrangement giving to one company running powers over the line of another company is valid, though no express powers therefor were conferred.

The earliest case was that of the South Yorkshire & River Dun Company v. Great Northern Railroad Company. There an agreement under seal was entered into between the two companies, by which it was covenanted that the latter company should have the use of the line of the former for a term certain at stated tolls, according to the tonnage carried, and it was agreed that these tolls should be charged in the tolls and dues of the company who had the use of the line, and that, upon the non-payment, the other company might take and impound such tolls and dues, and deal with the same in the same way as with dis-

tress for rent. The Great Northern Railway Company had the use of the other company's lines for a time, but refused to make any payments in respect thereof.

It was held that the contract was valid, and the using company should pay tolls.

In Ex. Chamber, 9 Ex. 942, 23 L. I. Ex. 186, in this case, the court said:

"It is a contract, the object of which is, and by which it is provided, that the plaintiffs in error may pass their carriages laden with coals over the line of the defendants in error, and so far as its purpose and general stipulations provide for effecting this, it is clearly a contract which the two bodies are competent to enter into."

In Great Northern Railway Company v. Manchester, etc., Railroad Company, 5 DeG. & Shane, 138,

"An agreement that two companies might mutually use the railway of one of the companies on certain specified terms was held good, as being consistent with a proper use of the railway and with the right of the granting company."

One of the latest of the English cases on this point is that of Midland Railway Company v. Great Western Railway Company, L. R., 8 Ch. 84, where the former, having running power over the latter, desired also to pass through the station of the latter at B. and run over H. road under an agreement with the H. Co., the latter having the right to the use of that station. This was refused by the Great Western Railway Company, and suit was brought to establish that right. The right was established against the defense of *ultra vires* set up by the Great Western. The Lords Justices, reversing the decision of the Master of the Rolls, held "that the agreement was not *ultra vires* or illegal, and the plaintiffs were entitled to the relief prayed."

Brice in his treatise, after citing this case, comments as follfollows (p. 322):

"We may then, perhaps, lay down broadly that *bona fide*

traffic arrangements for the more economical working of the traffic which comes to a group of companies, usually railroad companies, will be supported. But such arrangements must be in reality what in name they propose to be, simply agreements by which the business that comes within the scope of all is carried on conveniently and cheaply, and for the common benefit, and not transfers of the powers of some such companies."

In Stewart v. Erie & Western Transportation Company, 17 Min. 372, it is held by the court in reference to contracts between railroads for through transportation and division of fares:

"In view of present modes of transacting business of this kind, this authority would seem to be an incident of railroad corporations, unless withheld by the terms of their charter, and contracts of this kind, when made with a *bona fide* purpose to regulate traffic in a reasonable and just manner, are generally held good." "The division of the tolls and fares in such case," says the American editor (note to p. 321, Green's Brice), "may be according to any plan which is agreed upon, and need not be based upon the relative distances traveled."

In Sussex Railroad Company v. Morris & Essex Railroad Company, 4 C. E. Green, 13, the question was whether the defendant could make a contract with the complainant (a connecting railroad company) to allow the complainant one third of the amount received from each passenger brought by the complainant to defendant's road, or in any way to pay more than which was paid by the passenger for the complainant's fare. The Chancellor, after a review of the English cases, says:

"I find no adjudication whatever in this country upon this point, yet we know it is, and has been for years, the constant practice of railway companies to run in connection, passing freight and passengers over a number of lines forming one route, and to divide the receipts by an arbitrary schedule fixed upon, and not always, or in most cases, giving to each line the share earned on it, and that only. In many cases, as in the present, there may be good reasons for making a difference in the division of the profits. If an advantageous arrangement can be made by a line at the south end of a route with a line at the north end for conveying passengers in common, which could not profitably (and therefore would not) be entered into by the north line,

unless it received a larger portion of the earnings than in proportion to its work, there is no reason or principle of law why the south line should be prohibited from making an arrangement profitable to its shareholders, on the ground that the division of earnings must be unequal. The directors of such companies have the right to make contracts as to carrying passengers and freight. They can make such contracts for one trip, for one day, for one year, or for the whole existence of the company. They can make such contracts at prices lower than those limited in their charter and lower than those charged by others.

"The commutation contracts constantly made in all leading roads are in exercise of this power. They are made for months, a year, and sometimes for life. Their validity is founded on well-settled principles of law, and has never been doubted.

"There is nothing in such contracts against public policy or any law of this State. The want of such power would be a great injury to most railway corporations as well as the public, who, as in this, are much benefited."

In Androscroggin & Ken. R. R. Co. v. Androscroggin R. R. Co., 52 Me. 417, the court say:

"An agreement by a railroad to build its road so as to connect with another, and that the charges for transportation shall be regulated by both companies together, is a valid contract which will give ground for an injunction restraining such a change of gauge as would break up the connection."

Columbus, P. & J. R. R. Co. v. Indianapolis & B. R. R. Co., 5 McLean, 450.

Lord St. Leonards, in Eastern Counties Railway v. Hawkes, 5 Ho. of L. Cases, 381, holds this language:

"I trust that this decision and the decision of this house during the present session in the cases of National Exchange Company v. Drew, 2 May, 103, and in Baryate v. Shutrege, 5 Ho. of L. Cases, 297, will place the powers and liabilities of directors and their companies in making contracts, and in dealing with third persons. They do not authorize directors to bind their companies by contracts foreign to the purpose for which they were established, but they do hold companies bound by contracts duly entered into by their directors for purposes which they have treated as within the objects of their acts, and which can not be clearly shown not to fall within them; and they further hold companies to be bound by continued course of dealing

by their directors with third persons in relation to their shares, although that mode of dealing is contrary to the regulations of their deed of management. I hope we shall have no other cases before us where the defense of a company rests upon the want of power to make a contract which the parties have deliberately entered into, and under which they took a benefit, or upon the irregularities of their own proceedings."

Corporations are bound by the same implications and "inferences as natural persons." (Bates v. Bank of Alabama, 2 Ala. N. S. 451.)

In regard to the implied power of a railroad company to contract, Pearce, in his work on railroads, pp. 499, 500, and 501, uses the following language:

"Corporations have implied power to make such contracts as are usual and necessary for carrying into effect the purposes for which they are created. A railroad corporation is usually authorized to make contracts by an express provision of statute; but, in the absence of such provision, the power is necessary and incidental to the express power to locate, construct, maintain, and work a railroad. The power, whether express or implied, must, in view of the purposes and methods of such an enterprise, be allowed a liberal scope, etc. The power of a corporation in respects to contracts and business dealings extends not merely to those which are absolutely essential or indispensable to the performance of specific acts authorized by its charter, but as well to those which, not being prohibited by statute or public policy, are designed and may be useful to promote the main enterprise. The choice of means which are reasonably promotive of the main purpose is with the corporation; and where different methods stand this test judicial tribunals will not revise its discretion by holding that the one chosen was not indispensable and that another might have been more wisely chosen, etc. The contracts of a corporation are *presumed to be within its power*, and the burden of showing its incapacity by the terms of its charter is on the party who denies its validity."

He refers to the following, among other authorities, to wit: Angel and A. on Corporations, sec. 271; South Wales R. Co. v. Redmond, 10 C. B., n. s. 675, 685; Baltimore v. Balt. & O. R. Co., 21 Md. 50, 91; Brown v. Winnisimmet Co., 11 Allen, 326, 334; Buffet v. Troy & B. R. Co., 40 N. Y. 168; 36 Barb. 420,

423, 424; Smith v. Nashua L. R. Co., 27 N. H. 86, 94; Miss. & M. R. Co. v. Howard, 7 Wall. 392, 412.

2. Did the two companies execute or ratify the contract in controversy? It was executed in the name of the respective railroad companies, under their respective seals, by those officers and agents who are accustomed to transact the business of said respective companies with the presumed authority or sanction of these companies.

In 1880, about four years before the contract in controversy was executed, the said officers for said respective railroad companies entered into the aforesaid informal contract, which is the same in substance as the controverted one, and in reliance on the fulfillment of that contract, and in consequence of the making of the same, the appellee, the Kentucky Central Railroad Company extended its line of railroad from Lexington to Livingston, and appellant extended its line from Livingston to Jellico. We have no reason to doubt that the Kentucky Central Railroad Company would never have extended its road from Lexington to Livingston, if it had not made arrangements by said informal contract by which it could obtain the right to share in the through traffic between the North and South over its road, and some connecting road filling the gap that appellant's road did between Livingston and the Tennessee line, and the Georgia and Virginia system of railroads.

By this informal contract it was provided that appellant, for the purpose of accommodating the joint traffic of its road and that of said appellee, should "extend its line to a connection with the Knoxville and Ohio Railroad at the State line, and to allow said appellee to connect with this road north of Livingston." (Record, p. 102.) This Knoxville and Ohio road was a road "extending then from Knoxville to a point twenty miles east of Jellico, and which under the preliminary negotiations was to extend to Jellico." (Record, p. 101.) And we find that in August, 1884, the Kentucky Central Railroad Company entered into a contract with the East Tennessee, Virginia & Georgia Railroad Company, whereby said latter company

assumed an interest in the contract between appellant and said appellee now in contest. (Record, p. 104.)

Having made these respective contracts with appellant and the East Tennessee, Virginia & Georgia Railroad Company, by which said appellee acquired a connection with the Southern system of roads, and having obtained by its amended charter, approved March 20, 1871, power "to extend its road and build and equip and maintain one or more branch roads and lines of telegraph from any point on the line of its main road to the southern boundary of the State," etc.; and being thereby also empowered to "receive and enjoy any corporate rights, franchise, and privileges in Tennessee, or other Southern States, which may be granted to or by the legislature thereof;" and having, after it had constructed its extension from Lexington to a junction with appellant's road at Livingston in 1884, entered into the contract in controversy, substantially like the informal one, each being for the same purpose, and having exercised its rights and privileges under that formal contract from the time of its execution, September 1, 1884, to April 1, 1885, and having paid for the use of said road, agreeably to the terms of said contract from September 1 to December 1, 1884, $15,000 (Record, pp. 58, 101, 104), can it now be contended that the appellee, the Kentucky Central Railroad Company, did not ratify and approve the execution of said contract? As to the ratification of said contract by appellant, we have the records of the company showing that it did ratify it. (Record, pp. 100, 101.)

Should there be any doubt from the evidence that the parties to said contract, the two railroad companies, had ratified or could ratify said contract, unless such ratification was done by the stockholders of the two companies, according to said act, approved January 22, 1858, and we think there should be no doubt, then we say that we can not, perhaps, furnish the evidence that said contract was so ratified, but such evidence seems by the authorities not to be indispensable.

The doctrine seems to be this: That if railroads are invested

with the power to contract, and do contract in the exercise of that power, but fail to observe some of the formal requisites in such execution, such contract is nevertheless binding. This is the doctrine of the case of Zabriskie v. Cleveland, Columbus & Cincinnati Railroad Company, 23 How., U. S., 381. In that case the Cleveland, Columbus & Cincinnati Railroad Company had, for a consideration then considered by it to be beneficial to itself, indorsed and guaranteed four hundred bonds of $1,000 each, issued by the Columbus, Piqua & Indiana Railroad Company; and the latter company becoming insolvent, and the former having paid some money on its said guarantee, one of its stockholders brought suit to enjoin it from paying any more, insisting among other things, and chiefly that said company had no authority to indorse said guarantee. The ground of said objection is claimed to be founded in the alleged failure of this company to comply with the conditions of two acts of the legislature of the State of Ohio, under the authority of which acts said indorsed guarantee was made. The substance of these acts—the acts themselves not being quoted in said opinion—are thus given in the syllabus:

"In 1851 the legislature of Ohio passed a general law relating to railway companies, which empowered them at any time, by means of their subscription to the capital stock of any other company or otherwise, to aid such other railroad company, provided no such aid shall be furnished until, at a called meeting of the stockholders, two thirds of the stock represented shall have assented thereto."

"In 1852 another act was passed for the creation and regulation of incorporated companies in Ohio, re-enacting the above section, and providing further that any existing company might accept any of its provisions, and, when so accepted and a certified copy of their acceptance filed with the Secretary of State, that portion of their charters inconsistent with the provisions of this act shall be repealed."

The indorsed guarantee was made in April, 1854; but before such guarantee was made no meeting had been called of the stockholders in order to obtain their assent, neither did said company file with the Secretary of State a certified copy of their

acceptance, nor did the stockholders of two-thirds of the stock ever assent to such guarantee.

Now, whether the stockholders owning two thirds of the stock in the Kentucky Central Railroad Company ever approved the contract herein set up by appellant, according to the provisions of said acts of our legislature, we do not know, but have reasons for believing they did so approve it, but the stockholders of the appellant, the Louisville & Nashville Railroad Company, did tacitly approve it; but conceding for the sake of argument that neither company, at any called meeting for that purpose, approved said contract, did not each company have the same power and authority, without such expressed approval, to make the said contract under said acts of the Kentucky Legislature that the Cleveland, Columbus & Cincinnati Railroad Company had to guarantee said bonds under said acts of the legislature of Ohio? We can not doubt that they did, and in that case this honorable court held that said act of guarantee was valid and binding on the company.

The court say (p. 397):

"The corporation have executed the powers and claimed the privileges conferred on them, and they can not exonerate themselves from the responsibility by asserting that they have not filed the evidence required by the statute to evince their decision."

The court further says (p. 398):

"This principle does not impugn the doctrine that a corporation can not vary from the object of its creation, and that persons dealing with a company must take notice of whatever is contained in the law of their organization. This doctrine has been constantly affirmed in this court, and has been engrafted upon the common law of Ohio." (Citation of authorities.)

"But the principle includes those cases in which a corporation gets within the range of its general authority, but fails to comply with some formality or regulation which it should not have neglected, but which it has chosen to disregard."

We will not extend the argument further on these points,

having endeavored to show to the court that by the evidence and the law applicable to this case both the appellant and said appellee, the Kentucky Central Railroad Company, had express charter authority, and, if not, implied authority to enter into the contract in controversy, and that they having such authority did legally execute or ratify the same.

Should there remain in the mind of the court any doubt whether the appellee, the Kentucky Central Railroad Company, had authority to execute the said contract, then we insist that, from the facts and circumstances detailed herein, said company is estopped to deny the validity of said contract.

III.

Estoppel.

At the solicitation of said Kentucky Central Railroad Company, and under and in conformity with the terms of its contract, said Louisville & Nashville Railroad Company, with its own means, built the road from Livingston Station to Jellico Station, at a cost of $2,000,000, and thereby and under said contract said Kentucky Central Railroad Company acquired joint and equal traffic rights to and over the same with the Louisville & Nashville Railroad Company for the term of twenty-five years. On the part of said Louisville & Nashville Railroad Company said contract is completely executed. The road is built and at its cost, and said Kentucky Central Railroad Company has acquired and can not be deprived of its right to run its own cars over same; and, having received the consideration for its promise to pay $60,000 per year for same, it is estopped now to deny its said obligation. Common honesty, as well as the law, require that it shall not be exempted from, but shall discharge such obligation.

We cite the following authorities on this point:

"There are some conflicts of views not yet entirely reconciled by any leading well-considered cases as to the application of

rules to particular cases; yet there are some well recognized legal as well as moral distinctions which may be stated, to which the doctrine of *ultra vires* may be applied. One of which is that between executory and executed contracts: As to the former, if made in excess of authority, the courts at the instance of a stockholder will interfere to prevent its performance, especially if no wrong has been done, and if the parties can be left in their previous situation, because such contract contemplates an unauthorized diversion of corporate funds, and is therefore a breach of trust. But the rule is different in regard to *executed contracts; these*, by the plainest rule of good faith, *should generally be allowed to stand.* As, for instance, a railroad company mortgaged its engines, cars, etc., and 'all other personal property in anywise appertaining to the railroad of said company,' and used the funds of the corporation so obtained to purchase canal boats to run in connection with the railroad, but beyond its terminus. These were acts in excess of its legal powers. This was an executed contract. It was, however, held that neither the corporation nor any one claiming under it can set up such violation of duty to defeat the title of the mortgage; nor could the corporation defend itself against a claim for money paid at its request to one who advanced the price of a steamboat purchased for it, on the ground that the purchase was *ultra vires*, although the plaintiff, when he paid the money, knew all the facts. So, on the other hand, when afterward the plaintiff foreclosed his mortgage and obtained the money, he could not excuse himself from crediting the proceeds to the corporation on the ground that the act of taking the mortgage was *ultra vires.*" (2 Porter, 663–4. See authorities and statement in note (5) to said page 663.)

In Railroad Company against Howard, 7 Wall. 413, the court says:

"Corporations as much as individuals are bound in good faith and fair dealing, and the rule is well settled that they can not by their acts, representations or silence, involve others in onerous employments and then turn round and disavow their acts and defeat the just expectations which their own conduct has superinduced."

In Parish v. Wheeler, 22 N. Y. 507, the court say:

"Conceding that the company, being simply a railroad corporation, ought not, according to its charter, to purchase and own a steamboat, it nevertheless did purchase one in the name of

another person, and it took the possession and had the use of the property. Save and except such questions as might arise under the navigation laws, the company became the owner, and its title was never questioned. The vendor never repudiated the sale on any ground; and I think it would be very absurd to say that the corporation itself, or the defendant standing in its situation, can repudiate the transaction, the benefit of which was received in the manner stated. In my judgment, when a sale of a chattel made to a corporation is executed and complete in all things except the performance of its own promise to pay the price, a plea that it ought not to have made the purchase is not to be entertained, especially so long as it retains and insists upon retaining all the benefit of the contract. In this case the chattel was not only delivered and used by the purchaser, but the vendor received all pay for it, so that reclamation on his part upon any ground was out of his power. The draft now in question represents the unpaid balance of the purchase money. It would be strange if the company could not lawfully protect and re-imburse their own indorser, and equally strange if, after requesting the plaintiff to make the payment for them, they can be allowed to deny that they are indebted to him in that account. If the purchase of the steamboat involved any breach of the public law, the corporation alone was guilty, because all the restraints of the statute or the common law affecting the transaction are imposed upon it alone. There is certainly no moral turpitude if a railroad corporation buys a steamboat or builds a church; nor is there any legal turpitude. It may be an excess of power, or a private breach of trust in respect to its stockholders. The latter may complain or the State may interpose; but corporations themselves, like individuals, in dealing with other parties must live up to the rules of common honesty."

In the Southern Life Insurance & Trust Company, appellant, v. Augustus H. Lanier, appellee, 5 Florida, 110, it is said:

"A party can not avoid his contracts with a corporation, and thereby diminish the fund which was designed as a security for the benefit of the public, upon the pretense that there was some abuse of the corporate powers or mismanagement on the part of the Board of Directors in making the contract."

"A contract with a corporation may be binding on the parties though it be an abuse of the corporate powers for which the corporation may be answerable to the government which created it."

In Argenti v. City of San Francisco, 16 California, 264, it is said:

"But, if we are mistaken in our construction of the charter, there is still a clear and conclusive answer to both of these objections. It is well settled in relation to the contracts of corporations that where the question is one of capacity or authority to contract, arising either on a question of regularity or organization or of power conferred by the charter, a party who has had the benefit of the contract can not be permitted in an action founded upon it to question its validity."

And the court proceeds thus:

"It would be in the highest degree inequitable and unjust," says Mr. Sedgwick, "to permit the defendant to repudiate a contract the fruits of which he retains." (Sedg. on Com. and Stat. Law, 90.)

"In Silver Lake Bank v. North, 4 John. Ch. R., 370, where it was alleged that a foreign corporation has exceeded its power in making a loan, Chancellor Kent said it would rather belong to the government of Pennsylvania to exact a forfeiture of their charter than for this court, in this collateral way, to decide a question of misuser by setting aside a just and *bona fide* contract."

"In the State of Indiana v. Woran, 6 Hill, 37, it was contended that the Station Ireland Whaling Company had no power by its charter to purchase or deal in State bonds; and Mr. Justice Bronson, in delivering the opinion of the court, said: I agree with the counsel for the defendant that this company had no authority to purchase or deal in these bonds. But since the decision in Mop v. The Russee Lead Mining Company, 5 Hill, 137, I do not see that a corporation can ever avoid its obligation on the ground that it was given for property which the corporation was not authorized to purchase. In the Steam Navigation Company v. Weed, 17 Barb. 378, Mr. Justice Parker, in delivering the opinion of the court, said, I am happy to come to the conclusion that the law will not sustain this most unconscionable defense. It ill becomes the defendant to borrow from the plaintiff $1,000 for a single day to relieve his immediate necessities, and then to turn round and say, 'I will not return you this money, because you had no power by your charter to lend it.' We shall lose our respect for the law when it so far loses its character for justice as to sanction the defense here attempted."

See also Chester Glass Company v. Deney, 16 Mass. 94; McCutchem v. Steamboat Company, 13 Penn. 13; Sackett Harbor Bank v. Lewis County Bank, 11 Barb. 213.

ADDENDA:

I had overlooked the case of Camden
Co. vs May's Landing and E.H.C.R.Co.--
cided by the Court of Errors and Appea
Jersey, June Term 1886-- until the fol
went to press. We regard it as a very
case on the questions of ultra vires a
and call the attention of the Court es
it. It holds that "when a transactio
pleted, and the party seeking relief h
ed on his part, the plea of ultra vire
poration which has acquiesced in it,
ible in an action brought against it
forming its side of the contract, in
stances (like the one at bar) where t
has performed cannot, upon rescision,
to his former status"; and "The liabi
company does not rest upon the doctri
cation, which, in ordinary legal acce
plies to such contracts as a party ha
to make, but upon acquiescence, on wh
other party has acted, so that he can
stored (as in this case) to his forme
and thereby the company to be preclud
terposing its own infirmity as a defe
authorities are cited in the opinion.
7 Atlantic Reporter, pp 523.

right angles, in or near the southern edge of Newport at a point called Milldale, which is some four or five miles distant from Cincinnati by that road. And in 1879 a contract was made between the Louisville, Cincinnati & Lexington Railroad Company (now the L. & N. Railroad Company) and the Kentucky Central Railroad Company and the Pittsburgh, Cincinnati & St. Louis Railway Company (Record, 90, etc.), by which it is provided in section 7 as follows:

"SEC. 7. That the Louisville, Cincinnati & Lexington Railway Company shall receive from the junction of the Kentucky Central Railroad freight or live stock consigned go via the Pittsburgh, Cincinnati & St. Louis Railway, and transport the same from the Kentucky Central Railroad junction to the tracks of the Pittsburgh, Cincinnati & St. Louis Railway Company at Cincinnati at the following prices, to be paid by the Pittsburgh, Cincinnati & St. Louis Railway Company, viz: live stock, five dollars per car load, and dead or other freights two and a half (2½) cents per one hundred pounds, it being understood that so far as practicable cars of dead freight shall not be loaded with less than 20,000 pounds each, and that all cars of live stock or freight shall be loaded, transferred, transported, and delivered promptly each day at such hours as may suit the running of trains and conduce to the general benefit of the parties hereto and the success of the enterprise herein contemplated. Empty cars each way shall be transferred free."

And by section 11 it is provided:

"That the Kentucky Central Railroad Company shall have the right to have any live stock or merchandise (not provided for in the preceding sections) and destined to Cincinnati or to the connection of the Pittsburgh, Cincinnati & St. Louis Railway Company, transferred by the Louisville, Cincinnati & Lexington R. R. Co., on the same terms as named in section 8 (nearly section 7), to be paid by the Kentucky Central Railroad Company."

This is the only contract ever made by which the Louisville, Cincinnati & Lexington Railway Company agreed to transport freight for the Kentucky Central Railroad Company between Milldale (the junction) and Cincinnati (Record, 86), and this, it will be observed, only applies to traffic going from Milldale east via the Pittsburgh, Cincinnati & St. Louis Railway Company, and does not apply to freight coming from Cincinnati, but the Louisville, Cincinnati & Lexington Railway Company, in 1881, on application by the Kentucky Central Railroad Company, agreed to let these reduced rates apply to freight going in either direction, except to Lexington and points on its Lexington branch. (Record, 130, 131.)

In November, 1881, rates between Milldale and Cincinnati on traffic to and from local stations on the Kentucky Central Rail-

road Company were reduced, and still continued at the reduced rates. That was the condition of things when the road was commenced between Lexington and Livingston, and the road between Livingston and Jellico—and no contract had been sought by the Kentucky Central, or made with appellant, fixing tariff rates between Milldale and Cincinnati on freight going to or coming from points beyond Lexington. As soon as the road of the Kentucky Central was completed to Livingston, and it had leased the branch road which joined the L. & N. R. R. Co., Knoxville Branch at Lancaster, then the L. & N. R. R. Co. fixed the tariff rates between Milldale and Cincinnati on freight going to or coming from either of those points at the same rate that it had been to and from Lexington since 1882, or before. And this rate last mentioned, which took effect October 20, 1884, is the one of which appellee complains.

The Kentucky Central Railroad Company had in this nothing to complain of, for the L. & N. R. R. Co. was under no obligation to carry and never at any time agreed to carry between Cincinnati and Milldale freight going to or coming from points beyond Lexington at reduced rates—it should carry at its regular tariff rates, and it did. The rates between Milldale and Cincinnati on shipments that went to or came from local points on the Kentucky Central Railroad between Cincinnati and Lexington were very low, and little more than cost of carriage, and were made for the accommodation of the Kentucky Central Railroad.

They could be made without prejudice or injury to the appellant, for it did not and could not compete for any of that traffic. But as to freight shipped to or from Lexington and points beyond the case was entirely different. Both roads competed for that business, and in that competition the Kentucky Central Railroad Company had greatly the advantage, for its line from Lexington to Cincinnati was only ninety-nine miles, while appellant's road between those points was by the Lexington and Frankfort and Louisville and Frankfort roads to Lagrange, and then by the Short Line to Cincinnati, in all 150 miles; and freight from Livingston to Cincinnati on Kentucky Central was transported

over a direct line, while that over the L. & N. R. R. was transported first to Louisville over the Knoxville Branch, then to Cincinnati, in all more than one hundred miles further than by the Kentucky Central Railroad.

Now it is evident that appellant desired to share in this traffic, and also evident that it could not do so on such unequal terms, and at the same time ship such freight for Kentucky Central between Milldale and Cincinnati at reduced rates. It never at any time raised freights on the Kentucky Central Railroad but simply charged the regular tariff rates to and from certain points as and when these points became competitive. For this the Kentucky Central Railroad Company can not justly complain. It can hardly be claimed that appellant should ship at reduced rates to its own prejudice, competitive freight. Besides, there was nothing said in the contract in controversy about the prices that should be charged the Kentucky Central Railroad Co. between Milldale and Cincinnati on freight to and from Lexington and beyond, when the road from Livingston to Jellico should be completed, neither was the Kentucky Central Co. compelled or in any manner bound to transfer its freight to the road of appellant at Milldale. It could wagon it from its depot as it formerly did, or construct its own bridge as it is now doing. And the Kentucky Central Co. had no reason to suppose that it would, after said road should have been completed between Livingston and Jellico, have reduced rates between Milldale and Cincinnati on its freight coming from or going to points beyond Lexington, for it never had reduced rates to or from Lexington after its road had been completed to that point.

This complaint is groundless, and was, as we have said, an afterthought. And these charges complained of were not the cause, but are now made the pretense for not fulfilling the contract on the part of said appellee. If it had desired to obtain better rates than it had, it certainly would have made some effort to that end. (See Brown and Culp's deposition, Record, 83, 89, and 128, 140.)

But conceding that appellant did just what said appellee

charges it with having done, it was no breach of contract on appellant's part, nor did it authorize the repudiation of said contract by said appellee. If the tariff rates charged it were unreasonably high, a common-law remedy was at hand.

IV.

Lien of Appellant.

As to the lien which appellant claims to have on the rolling stock of the said appellee, the Kentucky Central Railroad Company, and which lien it claims to be superior to all others for the security of its aforesaid debts, a great deal need not be said, for the law conferring such lien is clear and unambiguous, and speaks for itself. It is embraced in the eighth section of aforesaid amendment (approved March 20, 1871) of the act to incorporate the Kentucky Central Railroad Company, and is in the following words, to wit:

"That to the extent of all claims of persons for injuries to stock or person, or for material furnished to said company, or breach of contract, the claimant shall have a lien upon the rolling stock of said company, any mortgage to the contrary notwithstanding."

The language of the act is very broad, and undoubtedly, it seems to us, embraces this appellant's claim; for it says all claims for breach of contract—any contract—and it will devolve on ~~plaintiffs and defendant~~ appellee, in order to defeat said lien, to show that it is not embraced by said act.

This section seems to have no specific reference, either to the railroad already completed and owned by ~~defendant~~ appellee, or to the extension of or branches of the same, which were by said act authorized to be constructed, but to relate to all damages done and contracts made by ~~defendant~~ appellee in reference to the business of its road.

If the legislature had intended by said act to create a lien on the rolling stock of said company in favor of persons suffering

from breach of contract, or of damage done by ~~defendant~~ appellee to persons or property in connection with the construction or in operating, when completed, of said contemplated extension, they would have said so; or if they intended that such lien should have reference to damages and contracts done and made by ~~defendant~~ appellee in reference to its old road, it would also have said so; and, not having done so, therefore we conclude that said section creates a new liability of said road, and affords a new protection to persons for damages done to person or property, or for breach of contract in reference to its business then or in the future to be done by appellee.

Besides, we can conceive of no reason which would induce the legislature to provide, or motive for said appellee to desire it to provide, a lien in reference to damages done on one and not on another part of its road. The damages and culpability would be the same, whether done or suffered on the old or new part of the road, and being the same, we can see no reason why both should not be equally protected by a lien, if either is.

And really we suppose no one will contend that for breach of contract by said appellee in reference to the carriage of freight over its old road, or for damages done to person or property while being by it transported over said road, that said section does not afford a lien on its rolling stock; and if such is admitted, then it must also be admitted that the provisions of said section and the protection afforded thereby are general.

This being the case, we can have no doubt that its provisions embrace the contract sued on herein. It is a contract made and broken by said appellee; made in reference to the business and supposed interest of its road and stockholders. A contract by the company for traffic arrangements with appellant, by which it hoped to enhance the value and increase the business of its then completed road.

A contract made for the purpose of carrying out the spirit of that amended act, which was to effect railroad connections with the Southern system of roads—all the beneficial purposes of which act were accomplished by said contract. Instead of building a

road from Livingston to Jellico, at a cost of $2,000,000, which appellee was unable or unwilling to do, said appellee obtained all the railroad facilities and all the benefit of such railroad connection by means of said contract. By it said appellee for twenty-five years has all the rights of traffic and business arising from that connection that the ownership of the extended road would have given it, without great outlay, but by simply paying interest on one half the cost of said road. It has the right and power by that contract to do the same character and amount of business over the road from Livingston to Jellico that it would have had by the ownership of the road. So that, if we were constrained to concede, which we do not, that the letter of the said eighth section limits the application of the lien thereby provided to damages arising from injury and breach of contract made and done on or in connection with said appellees' road completed or to be constructed, we should still confidently insist that the contract sued on is protected by said section — the spirit clearly embracing it. But, as we have hereinbefore stated, said lien had reference to all damages for injuries done to person or property, and for breach of contract, and is not to be confined to damages arising, or for injuries done, or contracts made in reference alone to a road of which said appellee has the absolute ownership. The spirit of the act which would, though general in its language, afford a lien for damages, etc., done or made on or in connection with a road owned absolutely by said appellee, would seem to afford like security for damages, etc., done or made on or in connection with a road of which said appellee was owner of the use.

Prior to the passage of the act of March 20, 1871, there was no law in Kentucky that gave any lien upon the rolling stock of the Kentucky Central Railroad Company for "injuries to stock or person," or for "materials furnished said company," or for "breach of contract." That act, as we have heretofore said, in this regard created new rights in favor of persons thus injured, and imposed corresponding new liabilities on the railroad company.

The question is, what did the legislature mean by the use of

the language employed? Affirmatively, we can certainly say it meant to secure the damages which any person, natural or artificial, might sustain in his person or stock, or for materials furnished, or for breach of contract, in reference to said road or the operation of the same, by reason of the wrongful act of said railroad company. When and how must the wrong be done the person or stock, and the damage sustained, to cause a lien for such damage to attach to the rolling stock of the company?

We answer, it may be done by negligence or willfulness of the company in the transportation of such person or stock. But this is not the limit. If the stock or person is killed or injured when on the train or by the train, through the company's fault, undoubtedly the lien equally attaches.

And we can further certainly assert that the lien would attach to that rolling stock for damage done to stock or persons by or on the train, while running over any part of the road of said appellee, between Covington and Lexington, or over the road of appellant, between Livingston and Jellico; for the liability of the common carrier is the same, whether he owns in fee or only the use of the road which he operates.

In regard to materials furnished the company, we suppose the question of lien or no lien therefor will not depend upon the fact whether the same are furnished for construction of the new road between Lexington and Livingston, or the repair of the old road between Covington and Lexington, but, evidently, the materials could not be furnished for the same use over both parts of the road. The materials furnished for which a lien attaches may or may not go into and constitute a part of the road-bed or rolling stock. The seller is not bound to look to their use, and his lien is complete when he furnishes the materials, no matter what may be done with them. The law presumes that in furnishing them the person is increasing the property of the railroad company for the purposes of discharging its duties to the public as a chartered common carrier.

This being the case, why does not a lien attach to that rolling stock to secure the payment of the materials furnished by appel-

lant for renewal, maintenance, and repair of the road between Livingston and Jellico, for one half of which the Kentucky Central Railroad Company agreed by said contract to pay. That material did not, 'tis true, go into or constitute a part of its road, neither need that furnished directly to it go into or form a part of its road. All that was necessary was that the materials should be furnished for its use.

It was done in each case. It was for its joint and equal use when furnished for the road jointly operated.

But it is not on the ground chiefly that the materials furnished by appellant were for the joint use of itself and said appellee that we claim a lien on the rolling stock, for such a claim would not, perhaps, embrace the claim of $60,000 per year for the joint use of that road, but our claim is, that the breach of contract which we set up is directly, clearly, and expressly secured by a lien on said rolling stock.

Some kind of a contract is provided for by that eighth section; now let us see what it can be if this one is not. We have already seen that in regard to injuries to stock or persons the lien attaches whether such injury was done on one part of the road or the other, whether it was done on the road owned in fee by said appellee, or the use of it owned only by appellee. We insist that the same is true as to the breach of the contract in contest.

Whatever kind it may be, the damage for the breach is secured by a lien, whether that breach takes place in reference to the old or new road, or in reference to appellant's road between Livingston and Jellico. Is there any principle of construction that can limit the application of the lien to a breach of contract made in reference to any particular part of the line of road extending from Covington to Jellico?

Suppose a person or stock is killed or injured while on said appellee's cars, or by the cars of said appellee while operating the road between these two points, does it affect the question of the company's liability whether such injury was sustained between Covington and Paris, or between Paris and Lexington, or between Lexington and Livingston, or between Livingston and Jellico? Undoubtedly not.

Now in regard to the contract the same principle applies, and the only question is, to what kind of contract does the lien afford protection? Suppose said appellee agrees to transport merchandise, stock, or persons, any where along the line of the road between Livingston and Jellico, and refuses to do so, and breaks its contract—is such a breach protected by said eighth section? Or suppose said company agrees to accept certain materials for its road at a certain price, or to purchase an engine or cars, or to employ a certain engineer, conductor, or other agent, and refuses to do so, is a breach of either of those contracts protected by the said statutory lien?

If a breach of no one of the supposed contracts is protected by said lien, then we ask what contract is thus protected? Some contract certainly is protected by that eighth section, and if any one of these supposed contracts is thus protected, which one is it?

In the nature of things is there a single reason why one of them should be protected rather than the other? We know of none, and said section makes no distinction. The engineer and car-builder has as much right to a lien for the breach of his contract, and is probably as much injured thereby as is the merchant whose goods the company refuse to carry; and the right of the engineer and conductor and other employes to have their several contracts kept and fulfilled by the company, and secured by a lien on the rolling stock, would seem to be as imperative as that of any one of the other classes of persons. All these contracts were in reference to the operation, business, and success of the road in the discharge of its duties to the public.

Now we insist, if these contracts or any one of them is embraced by said eighth section, then unquestionably the one in controversy is also embraced.

It was made at the earnest solicitation of the Kentucky Central Railroad Company, and for the double purpose of enabling it to perform more fully its public duties, and to enable it to increase its business and enhance the value of its road, and was wholly in reference to the operations of its road. Without the execution by appellant of that contract the Kentucky Central

Railroad Company had no outlet. It had but a local road. It desired and needed a southern connection. It would not or could not supply it by building a road from Livingston to Jellico. It gained all the advantages of such a road through that contract. Appellant obtained the right of way and built that road at an expense of over $2,000,000, and appellee got the joint and equal use by simply paying six per cent interest on one half its cost. It is the same as though appellant had built the road to become the property of appellee by its paying therefor forever six per cent on the cost. The materials are furnished for appellee as well as for appellant. Appellant has acted the part of contractor and material-man for the Kentucky Central Railroad Company in building that road, and has entered into a contract in reference thereto which is clearly embraced by said eighth section, if any contract is. We can think of none that can be embraced if this is not.

What is the character of that lien? Is it superior, inferior, or concurrent?

It may be contended that although the said eighth section of the act, approved March 20, 1871, may give a lien upon the rolling stock of appellee's road to secure the payment of appellant's debts, yet that such lien is subject to the alleged prior lien of the mortgage herein sought to be foreclosed. But such contention must be unavailing, as we believe, for although it is true that the lien of said mortgage attached before appellant's said contract was entered into, yet the mortgage was executed under and by virtue of said amended charter, and the clause giving the lien for said contract became part of said mortgage, and the mortgage is bound by it. No other doctrine is in harmony with the spirit or the letter of said act, for it clearly creates a lien to protect contracts, etc., which, when made, are to be protected thereby, notwithstanding the existence of any mortgage executed after the passage of the act, and this doctrine is, as we think, fully supported by authority.

In Brooks v. Railway Company, 101 U. S. 443, it was held that the lien of a contractor upon a railroad, the pay for whose

materials and labor was protected by a lien upon the road, was superior to the lien of a mortgagee whose mortgage was executed prior to the making of such contract or the furnishing the materials or performing the labor. This, upon the ground that by taking the mortgage under the act which gave the contract lien, it was taken subject to that lien.

This is an important case decided on this point, and we think it best to give an abstract of the facts and some of the argument of the court:

The complainants, as trustees in a mortgage made by the Burlington & Southwestern Railway Company on its road and other property to secure $1,800,000 of bonds put on the market and sold, sued to foreclose said mortgage. And the real controversy in the suit was between said trustees, as mortgagees, and O'Hana & Brother and Wells, French & Co., as lien claimants, as contractors for the construction of part of said road.

The company was organized under the laws of Iowa to build a road from Burlington, upon the Mississippi River, in a southwestern direction, to some point on the Missouri River. From the initial point at Burlington to Viele, in Lee County, Iowa, they, by contract, used the track of a road already built between Burlington and Keokuk. From Viele to Bloomfield, in Davis County, they built and paid for their own track. From Bloomfield to Moulton, in Apanoose County, fourteen miles, they used the road of another company, already built, and from Moulton to Unionville, in Missouri, they built their own road. It was for work done upon the last-mentioned part of this road—that part constructed by said contractors—that they claimed a lien for said work on the old road from Bloomfield to Moulton, and on the new road from Viele Junction to Bloomfield.

O'Hana & Brother's claim was for $39,763.24, and that of Wells, French & Co. was for $8,528.83.

It is conceded that the work was done by these contractors, and that the prices charged therefor are correct; and it is further conceded that, "before the work was done or the contract made therefor, the said mortgage to the complainants had been executed and duly recorded."

Section 2141 of the Code of Iowa, which was in force when said contract was made, contains this provision in reference to claims like those asserted by the contractors in this case, to wit:

"The lien for things aforesaid (buildings, erection, and improvement) on work shall attach to the buildings, erections, or improvements for which they were furnished or done, in preference to any prior lien or incumbrance or mortgage upon the land upon which the same is erected or put, and any person enforcing such lien may have such buildings, erection, or other improvement sold under execution, and the purchaser may remove the same within a reasonable time thereafter."

There are some provisions in reference to sub-contractors fixing the time and manner of presenting the evidence of their claims; but we need not quote these, because, although some of the above claimants were sub-contractors, yet their rights to insist on such lien as the original contractor might insist on is undoubted. So the question involved is the same as though made by the original contractor against said mortgagee under the above-quoted provision of the Iowa Code.

The court held that the statutory lien of the contractors had priority over the lien of the mortgage, not only on the part of the road on which the work was done, but on the other parts of the road, as claimed by them.

The doctrine, or rather the statute, which the courts construed as giving a permanent lien under such circumstances, was in existence when the mortgage of the appellants was made and entered into, and became a part of their contract.

There seems to be no real difference between that case and the one at bar as to the facts, the work done and claim made in each case having been done and made after the mortgage had been given and recorded; neither do the statutes giving the lien for such work differ. It is true, one says such lien shall be "in preference to any prior lien or incumbrance of mortgage upon the land upon which the same is erected or put;" but the other, in saying said lien shall attach "any mortgage to the contrary notwithstanding," quite as clearly evidences its intent that the statutory lien shall have priority over all others.

The case of James M. Walker v. The Mississippi Valley and Western Railway Company and others, decided in the United States Circuit Court for the Eastern District of Missouri, Treat and Dillon judges, is a very important case on the point in hand, involving a large sum of money. The claimants in this case, trustees under two mortgages given by said railroad company to secure its bonds, brought suit in equity to forclose them, and, among others, made defendants certain parties who had performed work and labor, and furnished materials in the construction and improvement of the railroad, and who claimed liens upon the railroad property under the act of the General Assembly of Missouri, approved March 21, 1873, entitled "An act to protect contractors, sub-contractors, and laborers in their claims against railroad companies or corporations, contractors or sub-contractors."

The claimants had two mortgages upon the property, but it is only with the second mortgage that we have to do. That was executed May 28, 1873, and was a first mortgage lien on that part of the road of said company extending from West Quincy to St. Charles, and a second mortgage lien on other parts of the road. The lien asserted by said contractors was against the property on which said second mortgage was a first mortgage lien. The contractors claimed that their lien was superior to the lien of said mortgagee. It was agreed by the parties that the lien claimants had complied with the statute in presenting and keeping alive their liens.

It was also agreed that the work and labor was done and the materials furnished in the construction and improvement of the railroad after June 20, 1873, that is, nearly one month after said mortgage was given.

The law conferring the lien provided that the lien given thereby should be prior to all mortgages or incumbrances placed upon the railroad and its property subsequent to the passage of the act.

The main question raised in the case was, whether the law was constitutional as applied to mortgages upon property when work and labor was done and materials furnished, and made since

the passage of the law. Judge Dillon, delivering the opinion of the court, held:

"That it was competent for the legislative power, and within the legitimate scope of legislative power, to provide in the act, entitled An act to protect contractors, sub-contractors, and laborers in their claims against railroad companies and corporations, contractors, and sub-contractors, approved March 21, 1873 (Session Acts, 1873, p. 58), that the lien given by the act should be prior to all mortgages or incumbrances placed upon the railroad property *subsequent to the passage of the act.* There is no constitutional objection to such a provision. (Phillips on Mechanics' Lien, sec. 30, pp. 46 and 47; Stonewall Jackson Association v. McGruder, 43 Ga. 9; Hildebrand's Appeal, 39 Penn. St. 133; Blainolt v. Wardsworth, 31 N. Y. 285; Hicks v. Murray, 43 Cal. 515; Davis v. Bilsland, 18 Wall. 659.) The lien given by the lien act is prior to all mortgages or incumbrances placed upon the railroad and its property subsequently to March 21, 1873, the date of this act." (11 Central Law Journal, p. 481.)

The authorities in harmony with the above are very numerous, and we know of no conflicting authorities, but we deem it unnecessary to cite more, and with the foregoing suggestions and authorities, we submit the case.

Respectfully,

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